



भारत का राजपत्र The Gazette of India

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सं. 14] नई दिल्ली, अप्रैल 2—अप्रैल 8, 2017, शनिवार/चैत्र 12—चैत्र 18, 1939
No. 14] NEW DELHI, APRIL 2—APRIL 8, 2017, SATURDAY/CHAITRA 12—CHAITRA 18, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 31 मार्च, 2017

का.आ. 844.—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) धारा 4, लखनऊ की दिनांक 20 फरवरी, 2017 की अधिसूचना सं.-01 सीबीआई/IV-पी-4-2017-15(08)बी/2017 द्वारा दी गई सहमति से एतद्वारा भारतीय दंड संहिता 1860 (1860 का अधिनियम सं. 45) की धारा 302/120-बी के अंतर्गत मामला अपराध सं. 52/2017 के आगे अन्वेषण के लिए दर्ज श्रवण साहू की हत्या के संबंध में पुलिस स्टेप्पान सादतगंज, जिला लखनऊ, उत्तर प्रदेश के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार संपूर्ण उत्तर प्रदेश राज्य पर करती है।

[फा. सं. 228/12/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 31st March, 2017

S.O. 844.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the

State Government of Uttar Pradesh, Home (Police), Section 4, Lucknow vide Notification No. 01 C.B.I./VI-P-4-2017-15(08)B/2017 dated 20 February, 2017, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole of the State of Uttar Pradesh for further investigation of Case Crime No. 52/2017 U/s 302/120-B of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Saadatganj, District Lucknow, Uttar Pradesh in relation to the murder of Shravan Sahu.

[F. No. 228/12/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 मार्च, 2017

का.आ. 845.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रधानाचार्य महाप्रबंधक, बीएसएनएल, कोट्टायम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 01/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.01.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th March, 2017

S.O. 845.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 01/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in Annexure, in the industrial dispute between the employers in relation to the Principal General Manager, BSNL, Kottayam and their workman, which was received by the Central Government on 09.01.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K Sasidharan, B.Sc., LLB, Presiding Officer

(Friday the 28th day of October, 2016/06th Kartika, 1938)

ID 1/2016

Workman	:	Shri A. Ganesan, S/o Arumughom, Municipal Colony, Fathimapuram PO, Changanacherry Taluk, Kottayam Pin 686102. By Adv. Smt. Tessy P. George
Management	:	The Principal General Manager, BSNL, BSNL Office, Head Post Office PO, Kottayam – 686101 By Adv. Shri. Saji Varghese

This case coming up for final hearing on 21.10.2016 and this Tribunal-cum-Labour Court on 28.10.2016 passed the following:

AWARD

This is an application filed by the workman under Section 2A(2) of the Industrial Disputes Act, 1947.

2. The averments in the application in brief are as follows:-

The workman was employed as a casual labourer - as a scavenger (contingent) in Telephone Exchange, E10B Exchange, Changanacherry from 1999 December to 06.01.2011. He had done the scavenging, cleaning and gardening work under the management regularly from 9:00 am to 5:00 pm. The management paid @ `120/- per day to the workman and his monthly income was `3,720/-. He has performed his duty sincerely, honestly and to the satisfaction of the officials under the management. Every year he worked more than 300 days under the management.

3. On 06.01.2011 the Sub-Divisional Engineer – Shri Baby Vijayan, informed the workman that his services are no longer required for the management. The employer denied employment to the workman without any reason w.e.f.06.01.2011. The management has not issued any show cause notice or charge sheet to the workman. No enquiry was conducted preceding the denial of employment of the workman.

4. The workman submitted representation before the General Manager, BSNL, Divisional Engineer(Vigilance), the District Collector, Kottayam and before the Labour Commissioner. The Legal Services Authority, Changanacherry directed the workman to file proceedings against the employer. On the basis of the complaint filed before the Assistant Labour Commissioner, Thiruvananthapuram, notice was issued to the employer. The employer refused to reinstate the workman. Therefore the workman has requested to pass an award directing the management to reinstate him in service with all benefits including the arrears of wages due to him.

5. The management filed written statement contending as follows:-

They have denied all the averments in the application except those that are specifically admitted. Even as per the admission of the workman, the management denied employment on 06.01.2011. The workman preferred this application under Section 2A(2) of the Industrial Disputes Act, 1947 on 01.12.2015, which is after a lapse of more than three years from the date of the alleged denial of employment. Therefore his claim is not sustainable in law as it is barred by limitation.

6. Without prejudice to the contentions raised above, the management has stated that the contention of the workman that he was employed as a casual labourer in E10 B Exchange, Changanacherry as scavenger from December, 1999 to 06.01.2011 is absolutely false and incorrect. The further averment that he was discharging his duties from 09:00 AM to 05:00 PM to the satisfaction of the management, is incorrect. After inviting competitive tenders, housekeeping work of Kottayam SSA was awarded to a contractor namely, Mahatma Gandhi Charitable Society. The period of their contract ended in June, 2010. The workman herein was employed under the said agency along with other workmen as part of the contract awarded to the contractor for the housekeeping work. The wages for the workman was paid by the contractor. The said agency is having the license under the Contract Labour (Regulation and Abolition Act) and separate registration as provided under the Employees' Provident Funds and Miscellaneous Provisions Act and Employees' State Insurance Act. The Provident Fund and ESI contribution of all the workmen engaged by the contractor are paid by the contractor. There was no employer-employee relationship between the BSNL and the workman. The contention that the workman was employed by the management for more than 300 days in a year is incorrect.

7. The allegation that Shri Baby Vijayan, Sub-Divisional Engineer working in the management denied employment to the workman on 06.01.2011, is absolutely false. After the completion of the contract period with Mahatma Gandhi Charitable Society in June, 2010, the workman was engaged on quotation basis by BSNL on payment @ `120/- per day till the first week of January, 2011. From November, 2010 the workman was not willing to do any other work other than the cleaning work for which he used to take hardly two hours per day. Therefore he was paid @`75/- per day for those days he had done the cleaning work. After January, 2011 he did not turn up for the cleaning work for the reason that he secured better employment. BSNL never engaged the workman for more than 240 days in any year. He is not entitled to get an order directing reinstatement or to recover the arrears and other benefits as claimed. The management has requested to dismiss the claim.

8. After filing written statement by the management the workman filed rejoinder reiterating the contentions in the application under Section 2A(2) of the Industrial Disputes Act.

9. The management in the meantime filed IA No.88/2016 requesting to consider the maintainability of the industrial dispute as a preliminary point. As requested by the counsel for the management IA No.88/2016 was heard and a separate order has been passed on 18.10.2016 holding that the claim of the workman is barred by limitation in view of Section 2A(3) of the Industrial Disputes Act.

10. In view of the disposal of IA No.88/2016 with the finding that the claim of the workman is barred by limitation, the workman herein is not entitled to get an order as claimed in the claim application.

11. In the result an award is passed holding that the workman is not entitled to any of the relief claimed as per this application for the reason that his application is barred by limitation under Section 2A(3) of the Industrial Disputes Act, 1947.

The Award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 28th day of October, 2016.

K. SASIDHARAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 30 मार्च, 2017

का.आ. 846.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जी.ए. डिजिटल वेब वर्ड प्राइवेट लिमिटेड दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 167/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/51/2016-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th March, 2017

S.O. 846.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 167/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s. G.A. Digital Web Word Pvt. Ltd. Delhi and others and their workman, which was received by the Central Government on 29.03.2017.

[No. L-42011/51/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 167/2016

The General Secretary,
All India General Kamagar Union,
Head Office, U-90, Shakarpur,
Delhi – 110 092

...Workman

Versus

1. M/s G.A. Digital Web Word Pvt. Ltd.
No.1, Hargovind Enclave, Vikas Marg,
IP Extension, Delhi – 110 092
2. M/s Sybex Computer Systems Pvt. Ltd.,
A-39, Lower Ground Floor, Basement,
Dayanand Colony, near Reliance Store,
Lajpat Nagar – IV, New Delhi – 110 024
3. The Registrar,
Jawaharlal Nehru University,
New Delhi – 110 067

...Managements

AWARD

Central Government, vide letter No.L-42011/51/2016-IR(DU) dated 26.10.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the union in respect of the workmen mentioned in Annexure ‘A’ (i) hold them to be the direct permanent employees of Jawaharlal Nehru University with all consequential benefits from the date of their initial engagement (ii) for paying pay and allowances to them at par with their regular counterparts employed by JNU (iii) to provide them the benefits of bonus at the appropriate rate (iv) to provide them benefits of earned leave, casual leave and privileged leave & (v) to provide them the benefits of conveyance allowance (@Rs.2000.00 per month) House Rent Allowance (@Rs.3000.00 per month), Health Allowance (@Rs.1000.00 per month), Dearness Allowance over and above the basic wage, LTC are legal and/or justified and if so, what relief the workmen are entitled to and what directions are necessary in this respect?”

2. In the reference order, the appropriate Government commanded the party raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite party/ies involved in the dispute. Despite directions so given, the claimant union opted not to file their claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the claimant union as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant union. Despite service of the notice, the claimant union opted to abstain away from the proceedings. No claim statement was filed on their behalf. Thus, it was clear that the claimant union was not interested in adjudication of the reference on merits.

4. Since the claimant union neither put in their appearance nor did they lead any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 27, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 30 मार्च, 2017

का.आ. 847.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अध्यक्ष एवं प्रबंध निदेशक, भारत व्यापार संवर्धन संगठन, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 86/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/79/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th March, 2017

S.O. 847.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 86/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Chairman & Managing Director, India Trade Promotion Organization, New Delhi and their workman, which was received by the Central Government on 29.03.2017.

[No. L-42011/79/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 86/2014

The Workmen,
Represented by India Trade Promotion Organization Employees Union(Regd.)
Room No.238, Pragati Bhawan,
Pragati Maidan, New Delhi – 110 001

...Workman

Versus

India Trade Promotion Organization, through
The Chairman & Managing Director,
Pragati Bhawan, Pragati Maidan,
New Delhi 110 001

...Management

AWARD

A reference was received from Central Government under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act), by this Tribunal, vide letter No.L-42011/79/2014-IR(DU) dated 07.10.2014, for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of the management in switching over to Medi-claim policy from the pre-existing medical rules of the organization without complying provisions of section 9-A of the ID Act & Industrial Employment (Standing Orders) Act, 1946 is legal and justified? If not, to what relief the workmen are entitled to with immediate effect?’

2. Claim statement was filed by the claimant union averring that India Trade Promotion Employees Union is a registered trade union duly registered with the Registrar of Trade Union under the Trade Unions Act, 1926 and is the only union having around 700 members. India Trade Promotion Organization, hereinafter referred to as the management, was earlier known as Trade Fair Authority of India incorporated under the Companies Act 1956 by the Registrar of Companies, Haryana and Delhi. Management is a Central Government Public Sector Enterprise and the main activities of the management are to promote, organize and participate in industrial trade and other fairs and exhibitions in India and abroad. Management for carrying out its activities employs various categories of employees, viz. Board level and below Board level executives, non-unionized supervisors and unionized employees. The unionized employees being workmen under the Act are entitled to all the protections provided under the Act, including notice of any change in conditions of their service applicable to them in respect of any matter specified in Fourth Schedule as per Section 9-A of the Act and the management cannot unilaterally change the existing conditions of service of the workmen to their prejudice without entering into any settlement with the Union or complying with provisions of Section 9-A of the Act.

3. Management has its own Medical Rules, applicable to the employees appointed on regular basis of pay on IDA pattern in the organization and their families. The Rules with regard to reimbursement of expenditure on hospitalization as on 21.05.2010 are contained in Rules 8 to 18.

4. Apart from hospitalization expenses, the employees under the medical rules were also entitled under Rule 7 to reimbursement of medical expenses other than Hospitalization on production of all receipts, prescription, vouchers and other supporting documents for each financial year for self and family with maximum ceiling will be one month's basic pay with one month's DA or Rs.4000.00 whichever is higher. The members were also free to consult/receive treatment from any registered medical practitioner of allopathic/homeopathic/Unani/ayurvedic system of medicine. However, reimbursement of commonly used medicines upto a limit of Rs.300.00 per month on the basis of cash memos without production of prescription of doctor and free consultation/treatment for hospitalization from any empanelled hospital of the organization.

5. Management entered into a Settlement of Pay Revision of unionized staff with effect from 01.01.2007 and with Union of unionized employees on 18.06.2007. Under the Settlement, it was agreed in Para 12 that regarding other perks, they would be negotiated separately. Subsequently since office memorandum dated 26.11.2008 issued by Department of Public Enterprises was not applicable to unionized employees/workmen, a memorandum of settlement was entered into between the management and the Union representing the unionized employees on 12.08.2010 relating to revision of the perks and allowance with effect from 01.01.200, wherein it was agreed that the medical facilities like unlimited reimbursement of expenditure for treatment/hospitalization in any empanelled hospital of the organization as well as pathological tests and investigation, E ray etc. as provided in the Medical Attendance Rules were not treated as part of perks and allowances, were left undisturbed as existed prior to settlement. Subsequently, management without entering into any fresh settlement with the Union of the unionized employees/workmen and without issuing any mandatory requisite notice under Section 9-A of the Act, unilaterally and arbitrarily with effect from 04.03.2014 directed cessation of the existing conditions of services of reimbursement of full medical expenses towards hospitalization and tests and instead introduced a group medical insurance coverage policy for its employees, including unionized employees as per Circular No.ADMN 269/2014 dated 04/05.03.2014 issued by the Manager (Admn.) purportedly with the approval of Competent Authority. Thus switching over from the pre-existing medical rules of the organization, which provided cashless/reimbursement of medical expenditure towards hospitalization and towards tests, to the medi-claim policy for which the annual premium is to be paid by the unionized employees/workmen with effect from 04.03.2014 is patently wrong, illegal, discriminatory and unjustified. Finally, it is prayed that the action of the management in switching over to medi-claim policy from the pre-existing medical rules of the organization without complying with provisions of Section 9A of the Act may be declared illegal and unjustified.

6. Written statement was filed on behalf of the management wherein various preliminary objections have been taken, inter alia of having introduced the said medi-claim policy after consulting the union, holding several rounds of discussion with the representatives of the union, instant proceeding being an afterthought to exert undue pressure on the management. On merits, the management has refuted the allegations contained in the statement of claim. It is claimed that the medi-claim policy has now come to an end with effect from 03.03.2015 and management with the consent and approval of the claimant union has introduced the restructured medical benefit scheme. Hence there is no necessity to refer to the benefits/facilities provided under the medi-claim policy or comparing the same with the earlier medical policy as existing prior to 04.03.2014. Finally, it has been prayed that the management has acted in consonance with the guidelines issued by the Department of Public Enterprises and the suggestions received from the employees. Introduction of medi-claim policy was within the knowledge of the employees and thus does not contravene the provisions of Section 9-A of the Act and hence, the same be dismissed.

7. Thereafter, case was listed for filing of rejoinder and it was stated at be bar by the parties that there is a possibility of settlement. As such, the case was listed for further proceedings.

8. The case was finally amicably settled vide settlement Agreement Ex.C-1, which is duly signed by both the parties, who have admitted their signatures before this Tribunal. Statement of both the parties, i.e. Shri Rajendra Singh, President, ITPO Employees Union and Shri Jawahar Lal Gupta, Deputy General Manager (Legal & Admn.) were recorded separately. In view of the settlement/Ex-C-1, there remains no grievance between the parties. The claim now stands settled vide settlement agreement Ex.C-1, which shall form integral part of the Award. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 23, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 30 मार्च, 2017

का.आ. 848.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, अशोक होटल, दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 80/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/150/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th March, 2017

S.O. 848.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 80/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Ashok Hotel, Delhi and their workman, which was received by the Central Government on 29.03.2017.

[No. L-42011/150/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 80/2015

The President,
Ashok Hotel Mazdoor Janta Union,
Ashok Hotel Staff Quarter No.C-47/48,
Chanakyapuri, New Delhi-110 021

...Workman

Versus

The General Manager,
Ashok Hotel, (Unit of ITDC)
50-B, Chanakyapuri,
Delhi-110 021

...Management

AWARD

A reference was received vide letter No.L-42011/150/2014-IR(DU) dated 04.02.2015 under clause (d) of the sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) from the Central Government for adjudication, terms of which are detailed as under:

‘Whether the workers whose names are listed in the annexure and who have been working in Hotel Ashoka through various contractors, entitled to regularization in Hotel Ashoka, if so, from which date and, if not, to what relief are they entitled to?’

2. Both parties were put to notice and claimants filed statement of claim wherein it is alleged that the claimants (13 in number) were working with Ashok Hotel (in short the Hotel) for maintenance/repair of staff quarter which are in the premises of the Hotel. The Hotel is paying their salary through contractors, who are changing from time to time but the workmen are working continuously with the Hotel. Details of the workmen is mentioned in Annexure A. Matter regarding regularization of the claimant was discussed with the Hotel for their regularization in the respective category in the revised pay-scale of Rs.7320-17970 to such workman and it was decided to take up the matter with the appropriate authority of law, for grant of regular and revised pay scale . Claimants are members of Ashok Hotel Mazdoor Janta Union and had approached the Hotel for regularization of their services on permanent basis and union took up the matter with the Labour Department. Demand notice dated 15.07.2013 was served on the Hotel, which remained un-replied till date. Thereafter, Labour Department has referred the above case of the claimant for adjudication .

3. It is the case of the workmen that they are working in the premises of the Hotel and the Hotel is the direct beneficiary of their services. The Hotel has taken the services of contractor, M/s New Modern Engineering prior to 2005. From 2005 to 31.03.2009, Hotel paid salary through M/s Yatender Kumar Gupta, from 01.04.2009 to 06.08.2012, through M/s Nirbhik Security Placement Services.

4. Hotel, thus, has been changing the contractor from time to time. However, workmen are continuously working under the Hotel. From 2008 to March 2012 Hotel has taken services of M/s Suraksha Security Services and from April 2012 from OYNX Management Services. Officials of the Hotel used to mark attendance of the claimants herein and also assigned work and job to the workmen. Officials of the Hotel also used to supervise their job and they were working under the administrative control of the Hotel. Hotel had also paid salary for overtime and used the contractor as middleman and contractors are not paying them even a single paisa to the workmen from their account. As per EPF Trust Rules, provident fund of the workmen should have been deposited in the EPF Trust of the Hotel as per para 14 of the Trust Rule but this was not done by the Hotel. As per certified standing order of the Hotel, if a workman works for 12 months continuously, he is liable to be absorbed as a permanent hand subject to availability of vacancy under permanent cadre. Though permanent vacancies are available in the respective departments, yet the services of the claimant are nor being regularized on regular basis. Hotel is taking double duty from the claimants and paying single wages, which is violation of Payment of Wages Act, 1948 as well as Manual of ITDC As per Contract Labour Act, 1970, claimants are entitled to same wages to which their regular counterparts are getting in the same Department/category on regular basis. But the Hotel is paying minimum wages to them as declared by Delhi Government from time to time, which is in violation of the Contract Labour Act, 1970. The job carried out by the claimants is of perennial nature and is carried out through contractors.

5. Claimants are also not being given leaves, even on national holidays, as per provisions under Delhi Shops and Establishment Act.. Finally, prayer has been made that the Hotel be directed to regularize services of the claimants herein in their respective category in which they are working.

6. Initially Shri B.K. Singh, authorized representative put up appearance for the Hotel. However, an application was moved at the earliest by Shri S.S. Upadhyay, A/R for the claimants under Section 36 (3) of the Act seeking directions to the effect that advocate be not permitted to conduct the case on behalf of the Hotel. The said application was allowed by this Tribunal vide order dated 14.07.2015.

7. Claim was resisted by the Hotel by filing written statement wherein various preliminary objections have been taken and material averments contained in the statement of claim were denied. It is alleged that the claimants herein are employees of Nirbhik Security and Placement Services and M/s OYNX Management Services for which the appropriate authority is the State Government and not this Tribunal, created by the Central Government. Hotel has also denied direct relationship of employer and employee between the Hotel and the claimants herein. It is also denied that the claimants have never worked under the Hotel at any given point of time for a continuous period of 12 months. It is, further, the case of the Hotel that provisions of Ashok Hotel Certified Standing Orders are not applicable to such claimants as they are employees of M/s Nirbhik Security and Placement Services, for fulfilling its obligations under the contract awarded to them.

8. Rejoinder was filed on behalf of the claimant wherein stand taken in the claim statement were reiterated and averments contained in the statement of defence were denied.

9. Against this factual background, this Tribunal vide order dated 04.02.2016 framed the following issues:

- (i) Whether the claimant has espoused as mandated under the provisions of the Industrial Disputes Act, 1947?
- (ii) Whether there was any employer or employee relationship with M/s Nirbhik Security and Placement Services and M/s Oynx Management Services?
- (iii) In terms of reference

10. Shri S.S. Upadhyay, in order to prove the case of the claimant examined himself as WW1 and also tendered in evidence various documents. Thereafter case was listed for evidence of the Hotel. Hotel was afforded opportunity to adduce evidence. However, none appeared on behalf of the Hotel on 11.07.2016 and 30.08.2016, as a result of which Hotel was proceeded ex-parte. It was on this day that evidence of the claimant was closed.

11. I have heard Shri SS Upadhyay, A/R for the claimant.

12. It is clear from the statement of claim that the claimants herein had approached their union, Ashok Hotel Mazdoor Janta Union (in short the Union) wherein they have raised demands as mentioned in the statement of claim and a meeting in this regard, as per averments contained in para 3 of the statement of claim as well as affidavit, was held on 23.03.2013 wherein it was decided to take up the matter regarding demands of the claimants herein with the management. Shri SS Upadhyay, in his affidavit has clearly deposed that he is the President of the Union for the last 31 years and his Union is duly recognized by the management of Ashok Hotel and claimants herein (13 in number) are members of the aforesaid union. He has further deposed that the aforesaid claimants have approached the union when they were being paid salary through the contractor and other benefits permissible under the various labour laws are not being paid to them. Resultantly, resolution was passed by the union on 23.03.2013 and demand notice Ex.WW1/2 was served upon the management on 15.07.2013. No reply was filed by the management to the said demand notice. Thereafter, matter regarding regularization of service of the claimants herein was taken up by the Union with the Labour Department by filing statement of claim on 12.08.2013. Since no conciliatory settlement could be arrived at between the parties, as such, after submission of failure report, the said reference was made in the aforesaid manner by the appropriate Government for adjudication of the above reference.

13. Admittedly, in the present case no evidence has been adduced by the management as the management abstained from the proceedings after filing of written statement. There is sufficient evidence on record regarding raising of demand as well as espousal of the case of the claimants herein by the union. Shri SS Upadhyay WW1 has duly proved the aforesaid documents. Claimants are also members of the Union. In such a situation, when no evidence has been adduced by the management to refute the allegations made by the claimants, this Tribunal is left with no choice except to act upon the evidence adduced by the claimants. Law is fairly settled that once a dispute is referred to a Tribunal by the appropriate Government under Section 10 of the Act, there is a legal presumption that the said dispute has been espoused by the union as required under the law. In view of this, it is held that there is proper espousal of the case of the claimants through their Union. Accordingly, issue No.1 is decided in favour of the claimants and against the management.

Findings on Issue No.2 and 3

14. Both these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently disposed of. Claimants, in order to prove that they are employees of Ashok Hotel, examined Shri SS Upadhyay as WW1 and various other claimants WW2 to WW14 and the same are in consonance with the stand taken by the claimants in their respective affidavits. It is the case of the claimants that management of Ashok Hotel is getting all kinds of work from them and management is paying salary through contractors to the claimants. Claimants are working continuously and matter regarding regularization of their services with the management of Ashok Hotel has been taken up from time to time. Prior to 2007, pay scale of Rs.4060-5385 (old scale) and now it has been revised to Rs.7320-17970. Stand of the management in the written statement is that the claimants mentioned at serial nos.1 to 10 and thereafter are employees of M/s Nirbhik Security and Placement services and were employed under annual maintenance contract of staff quarter whereas claimant mentioned at serial Nos.11 to 13 are employees of M/s Onyx Management Services. Management has further alleged in the written statement that there is no direct relationship of employer and employee between the management and the claimants. Not only this, management has gone to the extent of alleging that the aforesaid employees are not working for the benefit of management of Ashok Hotel.

15. Under such circumstances, vital question which arises for determination is as to whether there is relationship of employer and employee between the management and the claimants herein. In the statement of claim, it is clarified that the claimants that they are working since long and their salary was being paid by M/s Recruitment Bureau for the

period September 2110, through Suraksha security Services from October 2012 onwards whereas the workman are working since 10.12.2002 and Suraksha Security Services came into existence only in October 2012 . During the course of arguments, Shri SS Upadhyay, learned A/R for the claimant invited the attention of the court to the certified standing orders which governs Ashok Hotel and are applicable to the employees of the management. It is a very exhaustive document which clearly deals with the service conditions of the employees working in Ashok Hotel and as per section 3 of the above standing order Ex.WW1/4, all employees of the company shall be classified as under:

Section 3 : Classification of Employees

- a) Permanent
- b) Temporary
- c) Badlis
- d) Casuals
- e) Probationers

16. On perusal of order Ex.WW1/6, also shows that the management is maintaining its own provident fund trust and EPF of the employees is being deposited in the same. Claimant in order to prove that they were working in the premises of the management of Ashok Hotel invited attention of the Tribunal to their identity cards/security passes Ex.WW2/1 to Ex.WW2/11, Ex.WW3/1 to Ex.WW3/8, Ex.WW4/1 to Ex.WW4/8, Ex.WW5/1 to Ex.WW5/9, Ex.WW6/1 to Ex.WW6/6, Ex.WW7/1 to Ex.WW7/10 Ex.WW8/1 to Ex.WW8/8, Ex.WW9/1 to Ex.WW9/7, Ex.WW10/1 to Ex.WW10/10, Ex.WW11/1 to Ex.WW11/8, Ex.WW12/1, Ex.WW13/1 to Ex.WW13/6, Ex.WW14/1 to Ex.WW14/7, which clearly show that entry of the aforesaid workmen to the premises of Ashok Hotel was on the basis of the aforesaid identity cards/security passes. This further goes to prove that the claimants herein were working in the premises of Ashok Hotel and there is not even an iota of evidence on record to suggest that either the contractor or any office agent has been deputed so as to supervise the nature of work being done by the claimants herein and the other employees performing similar duties. In such a situation, there is considerable force in the contention of the A/R for the claimants that it was the management of Ashok Hotel who was assigning duties as well as work from time to time to such workmen. Perusal of extract of muster roll Ex.WW1/7 (colly) shows that the management has engaged Yatender Gupta as contractor during the year 2008 to February 2009. There is also copy of attendance register for the year 01.02.2012 to 23.02.2013 which shows that Nirbhik Security and Placement Services was the contractor and names of the claimants are mentioned who were working under him but the management has not taken any steps to summon any of the contractors whose names are mentioned in the written statement so as to prove the nature of work which was being done by the claimants herein in the premises of Ashok Hotel. It is the case of the claimants herein that the so called contractors are simply name-lenders and so called contracts between the management and the contractor are sham and nominal and have been entered into only with a view to deny regularization to the claimants herein, who are working since 2002. There is also no evidence worth the name to suggest that these contractors were duly licenced under Section 12 of the CLRA Act nor the management has placed on record copy of registration certificate as required under Section 7 of the CLRA Act. Management has also not cared to examine any of the officials of the management so as to prove the documents annexed with the written statement. Law is fairly settled that mere averments in the pleadings are not proof of the facts mentioned in such pleadings and each and every special fact is required to be specifically proved by adducing reliable evidence by such party. In the absence of any such evidence, court can also draw adverse inference against the management who was admittedly in possession of the relevant documents to prove the nature of the work as well as the duties to be performed by the claimants who are under the contractor or otherwise. Having failed to adduce any such evidence, the same has dealt a crippling blow to the case of the management.

17. Now, the primary question which arises for consideration is whether the workman were in the employment of Ashok Hotel or were employed by M/s Recruitment Bureau. Equally important is the fact that agreement between the management of Ashok Hotel and the contractor is genuine or simply a sham and camouflage so as to deny status of workmen under the principal employer herein. In this regard, strong reliance was placed by Shri Upadhyay, learned authorized representative appearing on behalf of the workman upon Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others (2001) 7 SCC 1, wherein the Hon'ble Supreme Court considered extensively various provisions of the Industrial Disputes Act, 1947 as well as Contract Labour Act, 1970 alongwith relevant notification issued under Section 10 of the Contract Labour Act, 1970. A critical appraisal of the above judgement would show that the Hon'ble Apex Court has taken into consideration the entire spectrum of the case law on the subject and held in para 107 as under:

107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of

the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.

18. Ratio of the above judgement has been cited with approval in all the subsequent pronouncement by the various High Courts as well as the Hon'ble Supreme Court and while making various conclusions, ratio of the law in Hussanbhai case (three judgements decision) was approved and ratio of the judgement in Air India Statutory Corporation Vs. United Labour Union (1997) 9 SCC 377 was partly overruled prospectively. It was also made clear that neither Section 10 of the Contract Labour Act nor any other provisions under the Act, whether expressly or by necessary implication provides for automatic absorption of the contract labour on issuance of notification by the appropriate Government under sub-section 1 of Section 10 prohibiting employment of contract labour in any process, operation or other work in any establishment. Matter is to be decided judiciously by the Industrial Adjudicator where a contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for the work of the establishment under a genuine contract or is merely a ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will be treated as employees of the principal employer who shall be directed to regularize services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder:

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

19. This Tribunal has to keep one thing in mind that the Industrial Disputes Act as well as Contract Labour Act are essential and beneficial legislation and the scheme of the Contract Labour Act 1970 is to regulate conditions of workers under the contract labour system and to provide for its abolition by the appropriate Government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of provisions of the Act punishable there-under. There is also requirement for the principal employer of the establishment to get itself registered under the Act so as to avail the benefit of provisions of the Act.

20. Reliance was also placed upon the case of Management of Ashok Hotel vs Their Workmen decided on 19.02.2013 in WP(C) No.14828/2006 wherein similar question was involved. It was a case where various workmen were working continuously as safaiwala/Housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who has entered into a contract with the principal employer, i.e. Ashok Hotel. Strong reliance was placed on behalf of the workmen upon ratio of the case in Steel Authority of India (supra) and contention of the management to the effect that workmen were employees of the contractor was rejected. Further, contract in the said case was also held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

21. In the case on hand, as stated above, neither the management has examined any of the contractors whose names are mentioned in the written statement nor any other official of Ashok Hotel so as to prove its stand that it was the contractor who is supervising and controlling their work on the spot. Rather, evidence adduced by the claimants herein is clearly suggestive of the fact that everything was being done by the claimants herein on the directions of the officials of the management who were assigning work to them. Their attendance was also being marked by officials of the management. Entry to the premises of Ashok Hotel as per various identity card/security passes also clearly suggests that the same were issued by the management. Management has also not placed on record any of the contract documents so as to ascertain the real terms and conditions of the documents. Even if it is assumed that only the contractors were being changed from time to time, in that eventuality also, management was required to file copy of such documents and also to examine some of such contractors so as to prove that such contractors are having effective control over the work of the claimants herein. In the absence of any evidence, this Tribunal has to rely upon the

evidence adduced by the claimants herein. Admittedly, services being performed by the claimants herein is in connection with the work of the establishment and aforesaid contractors are simply name-lenders as they have, in fact, no control of any kind over the claimants herein. Since the claimants herein are working since 2002 as is clear from their evidence, as such, case of such workmen is required to be considered for regularization in accordance with the office orders or policy of regularization meant for such employees.

22. In *Durgapur Casual workers Union vs. Food Corporation of India* (2015) 2 SCC 786, question of sham, bogus or such contract labour was considered by Hon'ble Ape Court and the management in the said case also came with the plea that the workmen were directly employed by the contractors as contract labour and as such, there was no relationship of employer and employee between the management and the workmen. Matrix of the case also shows that Food Corporation of India, i.e. the management had set up rice mill which was being run by successive contractors who have engaged contract labour. Rice mill was ultimately closed in the year 1990-91 and workers were employed by the Corporation as casual labour on daily basis. Later on, such workers raised an industrial dispute for regularization of their services as they were working under various contractors since long but were doing work for the management who was exercising supervisory control over them. Management also came with the pleading that demand of the workmen was in fact illegal and they were simply engaged as casual labour. Tribunal as well as Hon'ble High Court passed award in favour of the workman directing regularization of their services and their retrenchment by Food Corporation of India was held to be illegal. In intra court appeal, Division Bench of High Court set aside the judgement of the Single Judge, as such, matter was taken to the Hon'ble Apex Court who upheld the order of the Single Judge of the High Court as well as that of the Industrial Tribunal. It was also observed that FCI had committed unfair trade practice and terminated their services illegally instead of absorbing them. Contention of the management that their employment was to the contrary to the directions given by the Constitution Bench of Hon'ble Apex Court in *Uma Devi* case was rejected by the Hon'ble Apex Court by observing as under:

“34. It is true that the case of *Dharwad District PWD Literate Daily Wage Employees Association vs. State of Karnataka* (1990 2 SCC 396) arising out of industrial adjudication has been considered in *Umadevi* (3) (2006 (4) SCC1) and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in *Umadevi* (3) leaves no manner of doubt that what this Court was concerned in *Umadevi* (3) was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed.

35. *Umadevi* (3) is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme.

36. *Umadevi* (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. *Umadevi* (3) cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established.”

23. Reliance was also placed by Shri Upadhyay upon the case of *Management of Ashok Hotel vs Their Workmen* decided on 19.02.2013 in WP(C) No.14828/2006 wherein similar question was involved. In the said case also, Hon'ble High Court has dealt at length with the question of sham and camouflage agreement, particularly when workmen are shown to be working under different contractors from time to time and the management has raised similar plea that there was no direct employer-employee relationship between the management and such workmen. Hon'ble Apex Court held that in such a situation, it is duty of the court to pierce the veil and declare the correct position having due regard to the facts of the case. It was also the case that there was no prohibition notification issued under Section 10 of the CLRA Act, as is the position in the case on hand. In the said case, contractor has produced licence as required under Section 12 of the Act. They have not led any other evidence and it was proved on record that supervisory and effective control over the work of such employees was that of the management of Ashok Hotel. Resultantly, plea of the management was rejected and it was held that such employees are entitled to be regularized and directions was issued to frame policy of regularization and absorb such employees accordingly.

24. In view of the emphatic pronouncements made in the various rulings discussed above, this Tribunal is left with no choice except to hold that the claimants herein are also working since 2002 and their salaries have been revised from time to time, as such, there is relationship of employer-employee between the management and the claimants herein. Consequently, it is held that the claimants herein are entitled to be regularized in accordance with the

Regulations/policy of the management applicable in this behalf. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 22, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 30 मार्च, 2017

का.आ. 849.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, पूर्व दिल्ली नगर निगम, दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 65/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/222/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th March, 2017

S.O. 849.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 65/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, East Delhi Municipal Corporation, Delhi and their workman, which was received by the Central Government on 29.03.2017.

[No. L-42011/222/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 65/2016

Shri Jagdish Prasad, S/o Shri Girver Singh,
Through MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House,
New Delhi - 110 011

...Workman

Versus

The Commissioner,
East Delhi Municipal Corporation,
Udyog Sadan, Plot No.419,
Patparganj Industrial Area, Shahdara,
Delhi - 110 092

...Management

AWARD

Consequent upon receipt of reference from the Ministry of labour and Employment vide letter No. L-42011/222/2015/IR(DU) dated 07.01.2016 under clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act), this Tribunal is required to adjudicate the following industrial dispute:

‘Whether Shri Jagdish Prasad S/o Shri Girvar Singh is entitled to be regularized in the pay scale of Sectional Officer in the regularized category with effect from 01.04.2005 onwards with all consequential benefits? If so, to what relief the concerned workman is entitled to and what directions is necessary in this respect.

2. The appropriate Government vide Letter No.L-42011/222/2015-IR(DU) dated 26.02.2016 amended the above terms of reference as under:

‘Whether Shri Jagdish Prasad, S/o Girvar Singh is entitled to the pay scale and all allowances except increment with effect from 16.06.1998 to 31.04.2005 as per the policy of ‘Equal Pay for Equal Work’ during the period of muster roll. ? If so, to what relief the concerned workman is entitled to and what directions is necessary in this respect?’

3. As per the facts encapsulated in the statement of claim, Shri Jagdish Prasad, the claimant herein, had initially applied for the post of Section Officer appointed on muster roll under Shahdara North Horticulture Wing of management. He had applied for the post of Section Officer vide an application dated 05.07.1993 and the same was forwarded to the Commissioner of Municipal Corporation of Delhi on 07.07.1993. It is also alleged in para 4 of the statement of claim that he was initially appointed on muster roll in Shahdara North Horticulture Wing for the following work:

- (i) Development of nursery, i.e. propagation of all types of Indian plants
- (ii) Chrysanthemum, roses, Dahlias, preparation of annuals for flower shows
- (iii) Preparation of horticulture estimates, scrutiny and technical checking of estimates
- (iv) Execution of all types of horticulture works, such as:
 - (a) Development and maintenance of lawns
 - (b) Tree plantation, roadside and other institutions of MCD, such as Schools, Hospitals, Community Halls etc.
- (v) Execution of all types of horticulture works as per specification of CPWD schedule on rates.

4. The above work is also mentioned in circular issued by Director(Horticulture) vide appreciation letter dated 06.10.2003. The said letter clearly shows that the claimant was appreciated when he was working as Gardener in Horticulture department in 1998 on daily wages and since April 2005 on permanent basis..

5. It is the case of the claimant that he obtained degree in B.Sc. Agriculture from Meerut University in the year 1992, copy of which is Annexure C. Claimant later on applied for the post of Section Officer but the management vide letter dated 08.10.1993 directed the claimant to submit his registration certificate in Employment Exchange, Government of Delhi. Claimant also submitted reply to the said application vide letter dated 16.03.1998 regarding registration in Employment Exchange. It was diarized on 17.03.1998 and this proves that the claimant had requested the management to appoint him on the post of Section Officer (Horticulture) in MCD direct quota as is clear from representation dated 16.03.1998 Annexure D. Management, with a view to exploit the claimant appointed him as mali(gardener) but the work extracted by the management from the claimant is that of Section Officer. Claimant was paid wages of unskilled workman as mali from 15.06.1998 to 31.04.2005, instead of paying wages of highly skilled job of Section Officer. This action on the part of management is alleged to be unfair labour practice as claimant is entitled for highly skilled worker in view of policy dated 14.06.01988, which clearly provides for equal pay for equal work.

6. Claimant has further alleged that he was unlawfully made regular mali with effect from 01.04.2005 instead of Section Officer. Thus, action of the management is again unfair, unjust and unlawful as claimant was performing job of Section Officer during this period. Management, vide office order dated 21.10.1990, as fully detailed in para 10 of the statement of claim, has issued circular for payment of equal pay for equal work. Claimant was again exploited by the management as he was appointed as Chaudhary instead of Section Officer vide office order dated 04.03.2014, which is Annexure G. Later on, management again issued letter of appointment as Section Officer to the claimant as is clear from Annexure H, which further shows that the claimant was being treated as so from its very inception as Section Office and is regularized on the lower post of Garden Chaudhary vide letter dated 04.03.2014 is against the law.

7. Claimant has further alleged that as per LPA No.573/2013 titled North Delhi Municipal Corporation Vs. Harpal Singh, Hon'ble High Court has granted equal pay for equal work with effect from 01.04.1998 onwards and 50% of their muster roll services were counted for pensionary benefits. These workmen are similarly situated with those workmen who got award/order and thus the claimant is also entitled for equal pay for equal work from 01.04.1988 onwards alongwith 50% of their muster roll service may be counted for pensionary benefits, in view of circular dated 16.06.1988. In the light to the above office circular, management has followed concept of equal pay for equal work which has been upheld by the Hon'ble High Court vide LPA No.573/2013. Lastly, claimant has prayed that he may be awarded wages of Section Officer in regular time scale plus dearness allowance, house rent allowance, city compensatory allowance and other allowances.

8. Matter was contested by the management, who filed written statement wherein several preliminary objections were taken, such as non-services of demand notice, claim being without cause of action etc. were taken. On merits, management has denied most of the averments. However, it has been admitted that the claimant was initially engaged as daily wages worker under Horticulture Wing of Shahdara North Zone of unified MCD. Management has not specifically denied the averments contained in para 5 to 7 of the statement of claim as they are matter of record. It is alleged that the claimant was promoted to the post of garden Chaudhary wherein due process as per existing RRs. The exercise was undertaken by South Delhi Municipal Corporation and copy of the office order dated 04.03.2014 is Annexure G. It is also admitted that he has been assigned charge of Section Officer (horticulture) on look after basis

and does not entail financial enhancement as it is granted as stop gap arrangements for specific period to meet shortage of manpower. Claimant cannot get benefit as for the post of Section Officer, there is process for promotion/appointment as per RRs. Claimant has voluntarily accepted the post of mali though he has academic qualification of B.Sc. Agriculture.

9. Claimant filed rejoinder to the written statement filed by the management, reasserting the stand taken by him in his statement of claim.

10. Against this factual backdrop, this Tribunal on the basis of pleadings of the parties, following issues were framed:

(i) Whether claim petition filed by the claimant is not maintainable in view of the various preliminary objections?

(ii) As in terms of reference

11. Claimant, in order to prove the case against the management, examined himself as WW1 and his affidavit is Ex.WW1/A. He relied on documents Ex.WW1/1 to Ex.WW1/11. The claimant also examined Shri B.K. Prasad as WW2 and his affidavit is Ex.WW2/A and also relied on documents Ex.WW2/1 to Ex.WW2/3. Management, in order to rebut the case of the claimant, examined Shri P.N. Gandhi as MW1, whose affidavit is Ex.MW1/A and document Ex.MW1/1.

12. I have heard Shri B.K. Prasad, A/R for the claimant and Shri Narender Singh, A/R for the management.

Findings on Issue No.1

13. It is clear from written statement filed by the management that management has specifically taken the point that no demand notice has been served upon the management, as such, present dispute is not an industrial dispute and the case filed by the claimant is without any cause of action. So far as plea of the management regarding cause of action is concerned, this Tribunal is of the firm view that the claim is certainly legally enforceable cause of action against the management as the claimant is claiming grant of equal pay for equal work as he has performed duties as Section Officer though he was initially appointed only as mali on daily wages. Relationship of employer and employee between the parties has been fairly proved even from the pleadings of the parties. Management, in its reply, has admitted in para 4 that the present claimant was initially engaged as daily wager under Horticulture Wing of Shahdara North Zone of unified MCD. Even in the other paras, stand of the management that the claimant was promoted to the post of Garden Chaudhary following due process as per existing RRs. It is further admitted by the management in para 11 and 12 of the written statement that he was assigned charge of Section Officer (Horticulture) on look after basis. This, it cannot be said that prima facie the claimant herein does not have cause of action against the management, particularly when he was admittedly performing duties and functions of Section Officer (Horticulture) and drawing salary of only mali.

14. Shri B.K. Prasad, while appearing as WW2, has clearly deposed in his affidavit that his union is duly registered under the Trade Union Act vide registration No.4209 a and the certificate is Ex.WW2/1. IT is clear from perusal of the above circular that the same has been issued by Additional Registrar of Trade Union, Delhi. Letter Ex.WW2/2 further shows that Commissioner, vide letter dated 29.07.2005 was pleased to grant permission for negotiation and correspondence to MCD General Mazdoor Union in the Horticulture Department. Claimant has also filed proceedings of espousal, copy of which is Ex.WW2/3, which shows that meeting was held on 21.01.2015 wherein it was decided to espouse the cause of the claimant for grant of equal pay for equal work. It is now fairly settled that there is no prescribed format or proforma for espousing the cause of the workman.

15. There is no contrary evidence adduced by the management to the effect that the case of the claimant has not been properly espoused by the claimant whereas there is reference to espousal in Ex.WW2/A, affidavit of Shri B.K. Prasad. Tribunal cannot ignore one vital fact that that in the present case reference has been made by the Government under Section 10 of the Act and the objection regarding espousal was never taken earlier by the management when the matter was before the RLC. Moreover, Shri P.N. Gandhi, MW1 in his affidavit Ex.MW1/A has not specifically taken objection regarding non-espousal of the dispute of the claimant and he has simply alleged in Para 1 of his affidavit that the claimant is not covered under definition of section 2(s) of the Act. When matter has been referred by the Government under Section 10 of the Act for adjudication of industrial dispute, normal presumption would be that same case been appropriately dealt with at various levels and there is espousal of the matter. This Tribunal cannot ignore the fact that the management has not appeared before the RLC, as such management was proceeded ex-parte. Now, it is too late in the day to say that matter was not properly espoused by the union of the claimant. It is clear from the statement of claim herein that the claimant herein is a member of MCD General Mazdoor Union and his case has been espoused by the Union vide Ex.WW2/3. There is no precise definition of the term espousal under the Act. However, from the various authorities rendered by the court, it is clear that espousal means that the industrial dispute is adopted by the union as its own dispute and considerable number of workmen have given support to the case of an individual

claimant. It has been held in the Workers Union Vs. 7th Industrial Tribunal Calcutta (1994 FLR 701) that once a dispute is referred to a Tribunal by the appropriate Government, presumption would arise that such a dispute is properly espoused through the union. Since the management has not led any specific evidence regarding non-espousal of the present by the union of the claimant and matter has now been referred for adjudication under Section 10 of the Act, as such presumption arises in favour of the claimant.

16. It is, thus, clear from resume of discussion above that the case filed by the claimant herein cannot be said to be without cause of action and the reference made to this Tribunal by the Ministry of Labour is perfectly in accordance with law.

Findings on Issue No.2

17. The moot question which arises for consideration before this Tribunal is whether the claimant is entitled to regularized on the pay scale of Section Officer in the regular category with effect from 01.04.2005 onwards with all consequential benefits. It is neither in due nor in dispute that the claimant was initially appointed on muster roll of Horticulture Wing of Shahdara North Zone of unified MCD for the purpose of duties which are mentioned in para 4 of the statement of claim. He has also filed application dated 06.10.2003 and perusal of letter Ex.MW1/W1 also shows that Director of Employment has issued ID card in his favour and the date of registration of the ID Card is 03.03.1998. There is also application Ex.WW1/1 submitted by the claimant herein to Director (Horticulture) MCD wherein claimant has applied for the post of Section Officer in the year 1998. There is also mention of qualification of the claimant as B.Sc Agriculture, certificate is Ex.WW1/7. During the course of arguments, it was not denied even by the learned A/R for the management that B.Sc. Agriculture is duly eligible for the post of Section Officer. Identity Card of the claimant is issued by employment exchange.

18. During the course of arguments, learned A/R for the claimant has specifically referred to the office order dated 04.03.2014 Ex.WW1/5, which clearly shows that chaudharies were directed to report for duties before the respective Deputy Director (Horticulture) East Delhi and name of the claimant Shri Jagdish Prasad is serial no.8. Letter Ex.WW1/6 shows that following chaudharies were assigned the work of Section Officer on look after basis and name of the claimant in the said list is at serial No.1.

19. Letter of appreciation issued by Horticulture Department to the claimant on 06.10.2008 Ex.WW1/8 and letter Ex.WW1/9 clearly shows that the claimant has been performing his duties sincerely and satisfactorily. Lastly, claimant has relied upon the seniority list Ex.WW1/11 which shows that even officials with intermediate/BTC qualification were appointed as Section Officer.

20. It is clear from evidence as well as pleadings on record that the claimant was initially working as mali on daily wage basis on regular basis from 01.04.2005 whereas he was performing duties of Section Officer from the date of his initial appointment. He was made chaudhary with effect from 04.03.2014 Ex.WW1/5 and even at that time he was working as Section Officer :Horticulture. During the course of arguments, attention of the court was invited by the learned A/R for the claimant to the case of Randhir Singh vs. Union of India [1982] 1 SCC 618; It was a case where question of equal pay for equal work was considered in respect of driver constables in Delhi Police. Drivers in the police department were demanding the same pay scale which was being given to other drivers under the services of Delhi Administration. Claim was upheld by the Hon'ble Apex court as under:

‘Held, the circumstances that the persons belonged to different departments of the government is not sufficient to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities. If anything by reason of his investiture with the powers, functions and privileges of a police officer, the petitioner's duties and responsibilities were more arduous. The answer of the respondents that the drivers of the police force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the courts may recognize and act upon is unsound and irrational. The writ petition was, therefore, allowed. The respondents were directed to fix the scale of pay of the petitioner and the driver-constables of the Delhi Police Force, atleast at par with that of the drivers of the Railway Protection Force with effect from January 1, 1973.’

21. Same view has been taken in a latest judgement of the Hon'ble Apex Court in State of Punjab Vs. Jagjit Singh (2017) Lab.I.C. 427 whereby while considering concept of ‘Equal pay for equal work’, it was observed as under:

The principle of ‘equal pay for equal work’ can be extended to temporary employees (differently described as workchARGE, daily-wage, casual, ad-hoc, contractual, and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his

dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

22. In NDMC Vs. Harpal Singh, same question was considered by Hon'ble Apex Court and firstly whether the workmen were entitled to wages as was paid by CPWD to daily wagers employed under CPWD and secondly, whether the respondents would be entitled to 50% service reckoned as daily wages to be taken into account for the purpose of pensionary benefits.

23. It is clear from the above judgement that in view of the circular dated 16.06.1998 50% of their muster roll services were counted for pensionary benefits. It is further clear from legal position discussed above that the workmen who have been performing duties of particular nature is entitled to the pay-scale of the same post. In the case in hand also there is enough evidence on record to suggest that the claimant has been performing duties as Section Officer since July 99 and he is also B.Sc. Agriculture First Class, as is clear from Ex.WW1/7. He was wrongly regularized to the lower post of mali on 01.04.2005, whereas he should have been regularized much earlier upon the post of Section Officer : Horticulture. He was again promoted as chaudhary on 04.03.2014 as per office order dated 04.03.2014 Ex.WW1/5. Even at that time, he was performing admittedly duties of Section Officer. This Tribunal cannot ignore the fact that Shri PC Tomar, Director (Horticulture) has issued letter of appreciation Ex.WW1/8 in favour of the claimant and the other letter was issued by Shri K.K. Chauhan Assistant Director: Horticulture Ex.WW1/9. Perusal of Ex.WW1/10 also shows that the management of MCD follows working conditions of CPWD and accordingly work of mali is fully described in Ex.WW1/10 whereas claimant herein is performing work of Section Officer though he was only appointed as mali.

24. As discussed above, as per writ petition in the matter of Ompal and others, Hon'ble High Court allowed equal pay for equal work and observed in Para 3 as under:

'Moreover, learned counsel for the respondent has also sought to place reliance upon the communication dated 19.05.1982 issued by the Engineering Department of the MCD which records that the Engineering Department is following the norms of CPWD/Delhi Administration, PWD and all the scales applicable to the workers in CPWD/Delhi Administration, PWD are being implemented in the department. The aforesaid recommendation has been approved by the Standing Committee vide a decision No.2059/Stg. Dated 22.05.1982. In this regard, reference is drawn to the judgement of the Division Bench of this Court in LPA No.126/2010 and connected matters titled MCD Vs. Abid Ali and Others.'

25. Though management has taken up the above case by way of intra court appeal, but Hon'ble Apex Court has only modified the order of payment of equal pay for equal work with effect from 01.01.1998 as is clear from Para 10, which is reproduced hereunder:

'10. The only modification which would now be warranted would be the fact that there exists policy circular dated June 16, 1988 which was notified by MCD and it reads as under:

'The wages of the workers will be calculated in the manner indicated in the circulars issued by CPWD and will be effective from 01.04.1988 only in view of very tight financial position of the MCD and the ongoing process of regularization of daily wages employees according to phased programme besides other extra facilities already extended to them by different departments. Because of large number of daily wages employees working in MCD, the increase in wages may bring additional financial liability to the tune of about Rs.6.5 crores and we may have to cut down the civic services drastically if the payment is to be made from the date earlier than 01.04.1998. Proportionate increase will also have to be allowed to part time workers depending upon the actual duration of their duties. In order to get over the requirement of additional hands for anti-malaria operations, for short duration only, the department may engage 300 unskilled workers at the rate to be worked out on the basis of Rs.875.00 per month. A preamble for approval of increased rates of wages be taken to standing committee positively within two weeks.

11. The policy circular requires differential in wages to be made after April 01, 1988.

12. Ordered accordingly."

26. The above judgement of the Hon'ble High Court were taken care of by the management when they have issued letter dated 16.06.1998 Ex.WW1/3 and letter dated 21.10.1990 Ex.WW1/4. It is clear that in Ex.WW1/3 under Clause 3 of the said letter, management has increased the wages of the staff as per the above judgement as per the details given in the above clause. Letter Ex.WW1/4 also provides that workmen working on the said post are also entitled to the wage from the date when they were working on the said post. Thus, wages of the workmen is to be calculated in the

manner given in the above circular/letter. It is therefore held that Shri Jagdish Prasad, the claimant herein, is entitled to the pay scale and all allowances except increment with effect from 16.06.1998 to 31.03.2005, i.e. difference in the pay scale of mali and Section Officer, as per policy of 'Equal Pay for Equal Work' during the period of muster roll. Further, Shri Jagdish Prasad is entitled for regularization in the pay scale of Section Officer in regularized category with effect from 01.04.2005 onwards with all consequential benefits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 21, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 30 मार्च, 2017

का.आ. 850.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, भेल, कोलार गोल्ड फील्ड एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 38/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/18/2009-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 30th March, 2017

S.O. 850.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 38/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, BHEL, Kolar Gold Field and their workman, which was received by the Central Government on 03.03.2017.

[No. L-42011/18/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 20th FEBRUARY 2017

PRESENT : Shri V S RAVI, Presiding Officer

C R No. 38/2009

I Party

The President,
BEML Employees Association,
Bharat Earth Movers Limited,
KGF Complex,
Kolar Gold Field – 563115

Mr. Syed Afsar,
No. 1713, Madava Road, 4th Cross,
Robertsonpet, K G F – 563122

I Party in Person

II Party

The General Manager,
Bharat Earth Movers Limited,
Hydraulic and Powerline Division,
BEML Nagar,
Kolar Gold Field - 563115

Advocate for II Party :

M/s. N.S. Narasimha Swamy & Thulasiram Singh B.K

AWARD

1. The Central Government vide Order No.L-42011/18/2009-IR(DU) dated 17.07.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of General Manager, Bharat Earth Movers Ltd. in imposing penalty of reduction of one increment on their workman Shri Syed Afsar w.e.f 01.10.2000, given effect from 01.04.2002, is legal and justified? If not, to what relief the workman concerned is entitled to?”

2. Brief details mentioned in the claim statement are as follows:-

The I Party union is a registered union under the trade union act and the I Party workman Mr. Syed Afsar is a member of the said union. The I Party workman joined the service of the II Party on 18.07.1982, as a Miller in the Group of B, and due to his excellent, diligent work, he has been confirmed in service. The I Party submits that Shri. Syed Afsar has been issued with a charge sheet dated 11.01.1996, alleging in brief that I Party Syed Afsar has fabricated the false/bogus vehicle documents, i.e., registration certificate for TVS XL moped vehicle bearing Registration No. CKP 6263 and that he supplied the forged documents to Shri. S.I. Kumar for availing vehicle advance and that he obtained illegal monetary gratification of Rs. 700/-. The I Party workman has been implicated in the charges and the enquiry has been proceeded, without any rhyme or valid reasons. Further, no supporting documents have been annexed to the charge sheet and without any substance the allegation has been made against the I Party workman. The I Party has not been granted proper opportunity before imposing the said punishment. The I Party submits that the punishment of reduction of one increment for a period of 2 years is grossly excessive and totally disproportionate to the alleged misconduct. The Hon'ble Sessions Judge and Special Judge for CBI cases passed its judgment dated 16.08.2005, giving a clean chit by honourably exonerating the said Syed Afsar from the criminal charges. The I Party submits that the I Party workman is entitled to all the benefits, atleast, on par with his junior T.C. Prabhakara, and Co-worker Shaik Anwar. Further, the I Party workman and his family have been discriminated by the II Party. Therefore, the I Party prays to answer the points of dispute in favour of the I Party and set aside the extreme punishment of reduction of one increment for 2 years imposed by the II Party, w.e.f 01.10.2000, which has been given effect from 01.04.2002, and also, to direct the II Party management to pay Sh. Syed Afsar, all the consequential benefits, along with the costs of these proceedings, in the interest of equity and justice and also to direct the II Party management to promote the I Party workman by granting him the promotions and increments, based on services, rendered, by the I Party workman.

3. Brief details mentioned in the counter statement are as follows:-

As per the points of dispute referred to this Court, the II Party is called upon to justify its action that has been taken against the I Party workman concerned, in imposing punishment of reduction of one increment w.e.f. 01.10.2000, but given effect from 01.04.2002. The enquiry has been adjourned to 12.10.1998. On that day, the Presenting Officer produced and examined Mr. K. Pradeep Kumar, Inspector, CBI as a witness. The Disciplinary Authority proceeded to pass an order and thereby imposed the minor punishment of reduction of one increment in the present grade pay of the I Party for a period of 2 years w.e.f. 01.10.2000. After the appeal has been disposed of, the order has been given effect to, from 01.04.2002 and it has been made clear that the said punishment would be in operation only till 31.03.2004. It is submitted that the said action of reduction of one increment is proportionate to the gravity of the misconduct, levelled against the I Party. However, taking a lenient view in the matter, a minor punishment has been imposed. The said order has not been given effect, immediately, due to the intervention of the union and it has been kept in abeyance. The II Party is justified in imposing the penalty and it would not call for interference, at the hands of this Court. It is true that the charge sheet has been issued with regard to the supply of forged documents to Mr. Kumar to accommodate him and to avail the vehicle advance and, for taking illegal gratification. It is also true that, after the conclusion of the enquiry, the punishment of reduction of one increment for 2 years has been imposed. There is no bar for conducting the enquiry during the pendency of the Criminal Proceedings. It is denied that the punishment of reduction of one increment is grossly excessive, as contended. The Order of acquittal passed by the Sessions Court will not come in the way of disciplinary authority, imposing the said punishment. It is denied that there is any irregularity/discrimination committed by the II Party, with regard to the I Party. The question of promotion is not a subject matter of the above dispute, and hence, it cannot be gone into. It is also made clear that the question of consideration of any monetary benefit is also not a part of points of dispute referred to this Court and also it is not an incidental issue. It is submitted that the same is not maintainable since the points of dispute is different from the prayer made by the I Party. It is clear that, the I Party has been issued with minor punishment and that the II Party is fully justified in imposing the said punishment since the charges are proved against the I Party.

4. Point for consideration in the present matter is as follows:-

“Whether the II Party is justified, in imposing the penalty of withholding the increment for 2 years, of the I Party w.e.f 01.10.2000, given effect only from 01.04.2002?”

5. Analysis, Discussion Findings with regard to the above mentioned point:-

In this matter already orders passed on Domestic enquiry by holding that the Domestic Enquiry held as fair and proper. In the claim statement and also in the affidavit the workman Syed Afsar has specifically stated that the punishment of reduction of one increment in the present grade of pay of I Party for a period of 2 years w.e.f. 01.10.2000 which has been given effect to from 01.04.2002, it is illegal and also unjustified and I Party workman has been discriminated by the II Party. On the other hand, II Party has stated that the II Party is justified in imposing the said penalty and it would not call for interference at the hands of this Court. In such circumstances, the II Party has to establish that, the II Party is justified in taking the said action as against the I Party workman. Further, it is specifically admitted in the certificates issued by the II Party to the workman as per Ex W-42 to Ex W-44 marked in Domestic Enquiry, the II Party has already issued certificate of congratulation to I Party workman on crossing silver line mile stone in his career with II Party and the II Party has also wished for many more years of services duly signed by the Chairman and Managing Director of II Party management. In such circumstances, it is the duty of the II Party to establish that, the workman has fabricated the documents relating to vehicle with Registration No. CKP 6263 and its Insurance Policy and issued to another employee namely S.I. Kumar, so as to enable him to get the vehicle advance of Rs. 6000/- and workman took illegal monetary gratification of Rs.700/-. Further, it is stated in the counter, that the Pradeep Kumar, Inspector CBI, has been examined and through him Ex W-5 to Ex W-12 have been marked. However, the said Pradeep Kumar has been examined in Criminal Case and as per EX W-17, marked in Domestic Enquiry the Sessions Court has granted acquittal of I Party workman. Further, in the Enquiry Report namely Ex-M6 also, it is clearly pointed out that the I Party workman has referred the judgment of CBI Court. However, the same has not been considered properly, as per the Enquiry Report filed by the Enquiry Committee. The II Party has admitted in the counter statement that the II Party, has imposed the punishment of reduction of one increment in the present grade of the pay of the I Party for the period of 2 years w.e.f 01.10.2000. Further, in the counter itself the II Party has admitted the said order has not been given effect, immediately, due to the intervention of the union and it has been kept in abeyance. However, to establish the said statement, the II Party has not produced any material evidence or records.

6. Further, in the counter, the II Party has stated that there is no bar for conducting the enquiry when the Criminal Proceedings have been taken and one Pradeep Kumar inspector CBI, has been examined as witness in the Domestic Enquiry and through him the above mentioned documents have been identified and marked. Already it is held by this Tribunal that the domestic enquiry held against the I Party by the II Party is fair and proper. However, as per the judgment enclosed as Ex W-17, in the Domestic Enquiry the Criminal Case in Special Case No. 219/1996. 136/98 and 48/1999, wherein the I Party namely Syed Afsar and other 8 persons have been cited and all of them, have been acquitted on 16.08.2005. Though the said Criminal Case has been filed as against the 9 employees of II Party along with the I Party namely Syed Afsar, the said penalty of punishment of reduction of one increment in the present grade of I Party for a period of 2 years w.e.f 01.10.2000, has been imposed on the I Party herein alone. Further, no tenable reasons have been furnished by the II Party for imposing the said punishment on I Party alone, though it is admitted in the enquiry report itself that the I Party herein has referred the judgment of the CBI Court. Further, in the enquiry report, it is mentioned that during investigation, the S.I. Kumar has admitted to the MW-1, about false/bogus documents relating to the vehicle bearing Registration No. CKP 6263. Even the Pradeep Kumar mentioned in the enquiry report namely, Inspector CBI has been examined in the said Criminal Case. Further, in the claim statement as well as in the affidavit the I Party has clearly pointed out that the II Party is not justified in imposing the said penalty on I Party who has served with II Party management for more than 28 years and also having excellent record of service. Further, as per the Ex W-42, W-43, the I Party has been issued with appreciation certificates, of his service rendered to II Party and also II Party extended the best wishes for continuity of the service of I Party, and also as per Ex W-44, II Party issued service certificate on crossing the silver milestone in his career with II Party management, marked in Domestic Enquiry. On that grounds also, I Party has pointed out that, with malafide intention the II Party has passed impugned punishment and the same is not justified and there is no substance in the allegation made by the II Party on the I Party and the action made against the I Party is arbitrary, illegal and the II Party has imposed the said penalty with malafide intention on the I Party.

7. The pertinent question that arises for consideration is, whether the Tribunal has power to appreciate the evidence, after holding that the Departmental Enquiry is found to be as fair and proper. The Apex Court in a judgment reported in 2008 AIR SCW 3460 in the matter of MAVJIA C LAKUM Vs CENTRAL BANK OF INDIA, on interpretation of Section 11-A of the Act, has observed as under:

- “(a) After all the Tribunal has to judge on the basis of the proved misbehaviour. In this case we have already recorded that the Tribunal was firstly correct in holding that the misbehaviour was not wholly proved and whatever misconduct was proved, did not deserve the extreme punishment of discharge.
- (b) The learned judge seems to be of the opinion that if the enquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that is not the correct law. Even if the enquiry is found to be fair, that would be only a finding certifying

that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed that does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under section 11-A has to be exercised judiciously and the interference is possible only when the tribunal is not satisfied with the findings and further concludes that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned.

- (c) The Tribunal was justified in appreciating the fact that the charges were not only trivial and were not so serious as to entail the extreme punishment.
- (d) Though the learned judge had discussed all the principles regarding the exercise of power under Section 11-A of the Industrial Disputes Act as also the doctrine of proportionality and the Wednesbury's principles, we are afraid the learned judge has not applied all these principles properly to the present case."

In the above case, the Apex Court has considered the scope of enquiry by the Industrial Tribunal, in the said case, the finding of the learned Single judge of the High Court as regards to the power of the Industrial tribunal in case of enquiry held as fair and proper that the Industrial tribunal cannot go into the question of the evidence or the quantum of punishment. The Apex Court has held that the said law is not a correct law. Even in case the enquiry is held fair and proper, the Tribunal has to find out as to whether the findings arrived at by the Enquiry Officer are correct findings and supported by evidence and also find out as to whether the punishment is shockingly disproportionate. Accordingly in the present case also, appropriate award has to be passed, based on the above mentioned facts and circumstances.

8. Further, the I Party has filed the affidavit dated 10.03.2014, and also stated that he has involved in various trade union activities and the I Party's wife has been denied the appointment of the Teacher, by the II Party and when the I Party has requested for the same the II Party started harassing and victimizing the I Party. The I Party also requested the II Party to provide Industrial Tour to implement and improve productivity during 1996. Further, the I Party and union members have requested to provide over time wages as double wages and thereafter only the union has filed the case regarding the same and thereafter the II Party management started, harassing and victimizing the I Party.

Further, the I Party also requested the II Party to provide better quality and common food for the employees/executive since they are discriminated even now. The I Party also requested the II Party to reimburse the medical bill of the I Party's wife treatment and the II Party started, harassing and victimizing the I Party. Further, the I Party requested the II Party to provide merits scholarship for his 2 daughters and the same has been denied by the II Party. Also, the II Party in the letter dated 12.06.1995, addressed to the CBI and also, for the first time referred the name of the workers, i.e., Annamalai, B. Nazeer, G. Jayachandran, S.I. Kumar, and Shanmugam. On the false allegation the I Party's name has been inserted by the II Party on 31.12.1996. Even the Nazeer Ahmed has been granted his promotions/VRS during the pendency of the Criminal Case and subsequently the S.I. Kumar has been granted adhoc promotion by the II Party. Hence, the I Party prays to set aside the punishment order dated 07.09.2000, imposing and withholding the one increment for 2 years by the II Party and, the II Party has withheld the increments from 01.04.2002 to 31.03.2004. Further, the II Party has rightly pointed out in the counter that the question of promotion is not the subject-matter of the above dispute and hence, it cannot be gone into. However it is found that the workman is entitled to get consequential and other monetary benefits including promotion, that the said workman would have received in the absence of the impugned penalty imposed by the II Party. Further, it is seen that, the II Party/Management is adopting Super technical and hyper technical measures, so as to stop, the I Party/workman from getting legal benefits, as per the provisions of the Industrial Disputes Act. Further, the intension of the Legislature in enacting the social welfare provisions of Industrial Disputes Act would be defeated, if the untenable submissions of the II Party/Management are taken into consideration.

9. On a careful perusal of material record it is seen that there is sufficient force in the said submission of I Party. Further, the I Party has also, pointed out that the II Party issued adhoc promotion to another accused namely S.I. Kumar and also to Nazeer Ahamed and also accepted the VRS of said Nazeer and hence, the action of the II Party is illegal and also discriminatory. The said submission of I Party has not been answered, suitably by the II Party, in the appropriate manner. Further, the I Party has pointed out that after the Criminal Case, the I Party has sent several representations to II Party and also to pay the increment and other benefits and the same has not been considered by the II Party management. Further, in the present case it is seen that II Party has not established that I Party has done the alleged misconduct as per the principles of preponderance of probability. In the judgement filed on behalf of I Party, in the case of Kendriya Vidyalaya Sangthan Vs J.Hussain 2013 SCC vol 10 page 106 @ paras 7&8, it is clearly observed as follows:- "A host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the department or

establishment where he works, as well as extenuating circumstances, if any exists.” Also, in the case of Indian Railway Construction Company limited Vs Ajay Kumar reported in 2003 (4) SCC page 579, it is observed as follows:- “It will also be pertinent to mention that victimisation can be said to have occurred only when the charge against the employee is false.” In the present case also, it is seen that the charge as against the I Party has not been established by the II Party, in accordance with law and II Party has not strictly followed the law and there is violation, as such. On a careful perusal of entire materials on record, it is seen that II Party has not proved the alleged misconduct committed by the I Party, as per the principles of preponderance of probability and in the judgement cited on behalf of I Party in the case of Delhi Transport Corpn. Vs D.T.C. Mazdoor Congress and Ors, (1991) Suppl. 1 SCC 600, it is clearly observed as follows:- “It is well settled in law that right to life enshrined under ART.21 of the Constitution would include right to livelihood. The order of illegal termination of the service of the I Party visits with civil consequence of jeopardizing not only livelihood but also puts an end to the career.”

10. In the judgment relied on behalf of I Party and reported in WP No. 17316 of 2005(LK), by the Hon’ble Mr. Justice N. Kumar, dated 08.08.2005 in the case of The Divisional Controller Vs Sh. N. Ramachandra, it is held as follows: “The Labour Court has been vested with the discretion under Section 11-A of the Act to interfere with the punishment imposed by the management if it is of the view that it is disproportionate to the gravity of the charges proved. Not only the Labour Court should be satisfied with the punishment imposed by the management that, it is appropriate. The disciplinary authority themselves in similar matters have not imposed the punishment of dismissal, has rightly interfered with the order of dismissal. As the discretion exercised by the Labour Court cannot be said to be perverse or arbitrary and when the said discretion has been exercised in a judicious manner after taking into consideration the facts of the case and the law governing the same, I do not find any infirmity in the award to interfere with the said discretion exercised by the Labour Court.” In the present case also, it is seen that this Court has to exercise the said discretion, as there is perversity in the finding of the Enquiry Committee, for the above mentioned reasons. Further, in the judgment reported in 1999-1-LLJ 1094 the Hon’ble Supreme Court of India (CA No.1906/1999 dated March 30, 1999) Mr. Justice S. Saghir Ahmad and Mr. Justice V.N. Khare in the case of Capt. M. Paul Anthony Vs Bharat Gold Mines Ltd. & Another, It is observed as follows by The Hon’ble Supreme Court, “That a Criminal Case, based on the same set of facts as those on which the departmental proceedings were based, had been thrown out and the appellant acquitted. It would therefore be unjust and oppressive, the said the Supreme Court, to allow, the findings recorded at the ex-parte departmental proceedings, to stand.

As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.” Also in the judgment reported in 1985-1-LLJ 101, the Hon’ble Supreme Court of India (Civil Appeal No.4692 (NL) of 1984, dated 8th May, 1985), Mr. Justice D.A. Desai, Mr. Justice V. Balakrishna Eradi, Mr. Justice V. Khalid in the case of Anil Kukar Vs Presiding Officer and Others, It is held as follows:- “Disciplinary enquiry has to be a quasi – Judicial enquiry – Enquiry Officer should give reasons for the conclusion and also why he preferred Management’s evidence to that of the delinquent employee’s – Termination order based on a report containing conclusions without reasons, is unsustainable.” In the present case also, it is seen that there is perversity in the finding of the Enquiry Committee, for the above mentioned reasons.

11. Further, in the case reported in 1978-II LLJ 84, the Hon’ble Supreme Court of India (Civil Appeal No. 2313(N) of 1968, dated 19th April, 1978) Mr. Justice R. S. Sarkaria, Mr. Justice P.S. Kailasam in the case of Nand Kishore Prasad Vs State of Bihar and others, it is clearly held as follows: - “Suspicion cannot be allowed to take the place of proof even in domestic enquiries. In punishing the guilty, scrupulous case must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquires held under the statutory rules.

The High Court examined the records of the domestic Tribunal, not with a view to make out or reconstruct a new case, but only to see whether there was some evidence of the primary facts relied upon by the domestic Tribunal in support of II Party’s contention. There is no impropriety in the course adopted by the High Court.” In the case on hand, also, it is seen that there are no relevant material on record in support of II Party’s contention. Also, the Hon’ble Supreme Court of India (C A Nos. 322-323/1999 dated September 20, 2000) Mr. Justice S. Rajendra Babu, Mr. Justice D.P. Mohapatra in the case of Tata Engineering Vs Locomotive Co. Ltd and Jitendra Prasad Singh and Another, it is specifically held as follows:- “High court holding singling out one of the appellants for dismissal not proper – Supreme Court refused to interfere.” In the present case also, it is seen that the said workman Syed Afsar alone has been punished though in the Criminal Case itself 9 persons have been cited as accused along with the said Syed Afsar, and the said Criminal Case has also ended in acquittal. Further, in the judgment reported in 1985-LLJ-184, the Hon’ble Supreme Court of India (Civil Appellate Jurisdiction), (Civil Appeal No.480(N) of 1973, dated 12th March, 1985), Mr. Chief Justice Y.V. Chandarchud, Mr. Justice D.A. Desai, Mr. Justice Amarendra Nath Sen in the case of Shankar Dass Vs Union of Indian and another, it is significantly held as follows: - “Application of mind before imposing penalty – The right to impose penalty implies duty to act justly and there is no right to be heard on penalty.” Also, in the

judgment reported in I.L.R. 1994 KAR 1429, Mr. Justice Tirath singh Tahakur, J, in the case of Irappa Vs Management of M/s. Karnataka State Construction corporation Ltd, it is clearly held as follows:- “Duty of the Inquiry Officer: to act independently, fairly, objectively and record reasons for conclusions drawn.” In the present case also, it is seen that the Enquiry Commission has not given the findings with valid reasons.

12. Also, in the judgment reported in 1999-I-LLJ 604, the Hon’ble Supreme court of India (C.A. No.6359-6361/1998 dated December 17, 1998), Mr. Justice. S Saghir Ahmad, Mr. Justice S.P. Kurdukar in the case of Kuldeep singh Vs Commissioner of Police and Others, it is held as follows: -

“Domestic enquiry—Findings of guilt based on no evidence-would be perverse and amenable to judicial scrutiny.” Also, the Hon’ble High Court of Bombay (W.P. No.4655/1944 dated July 18, 1998) Mr. Justice A.D Mane, Mr. Justice A.B. Palkar in the case of Sumangal Veerbhadur Rana Vs State of Maharashtra & others, it is particularly held as follows: -

“Domestic enquiry—Relevance of acquittal in criminal proceedings – Eventhough it is not binding, due consideration must be given before applying mind for imposing punishment – Workman acquitted of charges of theft service on same charge – Acquittal by court – not considered – no show cause notice was given – Enquiry vitiated on both counts.” Also, in the judgment reported in 1994 Supp(3) SCC 674 (before Hon’ble Mr. Justice K. Ramaswamy & N Venkatachala. J.J) in the case of Sulekah chand and salek chand Vs. Commissioner of Police and others, it is specifically held as follows: - “Service Law – suspension- Criminal prosecution, suspension and departmental enquiry on the same charge – Acquittal on merits in prosecution – Effect – Held, the employee became entitled to blotless reinstatement.” Also, in the judgment reported in 1991(2) Kar.L.J.423, the Hon’ble High Court of Karnataka at Bangalore, 14th June, 1991 Mr. Justice N.Y. Hanumanthappa. J, in the case of S. N. Gurumurthy Vs. Karnataka State Handicrafts Development Corporation Limited, it is particularly held as follows:- “Domestic Enquiry – finding of guilt if recorded without examination of material witnesses available – Fatal.” Further on a careful scrutiny of the materials brought on record it is found that the II Party, has not established the allegation as against the I Party-workman, on the principle of preponderance of probability, and consequently, the punishment imposed on the I Party is also not legal and justified. Thus, the point is answered in favour of the I Party. Accordingly, the following award is passed:-

AWARD

The II Party is not justified in imposing penalty of reduction of one increment in the present grade pay of the I Party for the period of 2 years w.e.f 01.10.2000 and given effect only from 01.04.2002 and consequently the II Party/Management is directed to pay to the said workman Sh. Syed Afsar consequential and monetary benefits including promotion, that the said workman would have received in the absence of the impugned penalty imposed by the II Party and the present reference is ordered accordingly without cost for the above mentioned peculiar facts and special circumstances.

(Dictated, transcribed, corrected and signed by me on 20th February, 2017)

V. S. RAVI, Presiding Officer

Witness examined on behalf of I party:

WW -1	Sh. Syed Afsar, Workman
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Exhibits marked on behalf of I party:

Exibits	Dated	Particulars
Ex-W1	20.11.2013	Warning Letter.
Ex-W2	13.03.2014	Officer (H.R) Letter.
Ex-W3	30.03.2014	Reply by workman.

नई दिल्ली, 30 मार्च, 2017

का.आ. 851.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 33/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-31011/14/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2017

S.O. 851.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Mumbai Port Trust and their workmen, received by the Central Government on 30.03.2017.

[No. L-31011/14/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/33 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
MUMBAI PORT TRUST

The Chairman
Mumbai Port Trust
S.V. Marg, Ballard Estate
Mumbai 400 001

AND

THEIR WORKMEN

The Secretary
Transport & Dock Workers Union
P.D'mello Bhavan
P.D'mello Road
Carnac Bunder
Mumbai 400 038

APPEARANCES:

FOR THE EMPLOYER : Mr. M.B. Anchan, Advocate.

FOR THE UNION : Mr. Abhay Kulkarni, Advocate.

Mumbai, dated the 27th February 2017.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-31011/14/2008-IR (B-II), dated 16.02.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the Union while handling over the activities of BPS berth and entire area of BPS to ICTPL the existing workers number 151 should be allowed to work with ICTPL but not in part i.e. 50 which was referred by the MBPT management is justified? What relief the union is entitled to ?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party union filed their Statement of Claim at Ex-6. First party Management resisted the Statement of claim by filing their Written Statement at Ex-7. Issues were framed by my predecessors at Ex-8. Matter was fixed for filing documents and evidence of union.

3. Today Advocate for the second party Union filed application (Ex-10) enclosing a copy of letter of Union stating that the issue involved in this Reference does not survive and prayed to dispose of the reference as not pressed.

Advocate for the first party endorsed his Say below Ex-10 giving 'no objection'. Orders were passed on Ex-10. As the Second Party Union does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 27.02.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 30 मार्च, 2017

का.आ. 852.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 65/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-31011/13/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2017

S.O. 852.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Mumbai Port Trust and their workmen, received by the Central Government on 30.03.2017.

[No. L-31011/13/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/65 of 2008

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF
MUMBAI PORT TRUST**

The Chairman
Mumbai Port Trust
S.V. Marg, Ballard Estate
Mumbai 400 001

AND

THEIR WORKMEN

The Secretary
Transport & Dock Workers Union
P.D'mello Bhavan
P.D'mello Road
Carnac Bunder
Mumbai 400 038

APPEARANCES:

FOR THE EMPLOYER : Mr. M.B. Anchan, Advocate.

FOR THE UNION : Mr. Abhay Kulkarni, Advocate.

Mumbai, dated the 27th February 2017.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-31011/13/2008-IR (B-II), dated 16.12.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demands of the Transport & Dock Workers Union raised against the management of Mumbai Port Trust that (i) 84 Cargo handling workers of OBL and Cargo handling shore workers (as per the number of categories annexed) of Mumbai Port Trust who are being regularly employed at 14A, VD to handle container should continue to be employed for the purpose of handling transshipment container arriving from JNPT (ii) there should be no change in their wages, piece rate opportunities and service conditions and (iii) the present system of allowing the Transport Operators to transport containers of the respective Lines from 14 A V D to pre-stack and nominated sites and vice-versa are legal and justified. If so, what relief the concerned Union/Workmen are entitled to ?”

Annexure

Existing deployment of cargo handling workers Shiftwise at 14A VD for handling container Barges.

Sr . no.	Category of employees	Total per shift	Total in a day for 3 shifts
	OBL		
1.	GPM	8	24
2.	Hatch Foreman	1+1	6
3.	Cargo Supervisor	1	3
4.	Asstt. Supervisor	1	3
5.	Dock Clerk	1	3
6.	Foreman	1	3
7.	Chargeman	1	3
8.	Carpenter	1	3
9.	Gearman	1	3
10.	Tally Clerk	1+1	6
11.	Shore Workers	6	18
12.	Shed Superintendent	1	3
13.	Labour Supervisor	1	3
14.	Table Clerk	1	3
	TOTAL	28	84

Total 84 employees of the Mumbai Port Trust are deployed at 14A VD in 3 shifts.

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party union filed their Statement of Claim at Ex-8. First party Management resisted the Statement of claim by filing their Written Statement at Ex-9. Issues were framed by my predecessors at Ex-10. Matter was fixed for filing documents and evidence of union.

3. Today Advocate for the second party Union filed application (Ex-12) enclosing a copy of letter of Union stating that the issue involved in this Reference does not survive and prayed to dispose of the Reference as not pressed. Advocate for the first party endorsed his say below Ex-12 giving ‘no objection’. Orders were passed on Ex-12. As the Second Party Union does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 27.02.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 30 मार्च, 2017

का.आ. 853.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 36/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-12012/38/2013-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2017

S.O. 853.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 30.03.2017.

[No. L-12012/38/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/36 of 2013

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF
BANK OF INDIA**

The General Manager,
Bank of India,
C-5, G-Block, Bandra Kurla Complex,
Bandra East,
Mumbai – 400 051.

AND

THEIR WORKMAN

Shri Mahendra Kantilal Dugud,
C/7, Keshar Plaza,
Near Navrang Hall,
Dindori Road, Nasik,
Nasik (Maharashtra) - 422003.

APPEARANCES:

FOR THE EMPLOYER : Mr. L. L. D'souza, Advocate

FOR THE WORKMAN : In person

Mumbai, dated the 14th February, 2017

AWARD

1. Government of India, Ministry of Labour & Employment vide its Order No. L-12012/38/2013 – IR (B-II) dated 07.06.2013 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this tribunal for adjudication.

“Whether the action of the management of Bank of India in terminating the services of Shri Mahendra Kantilal Dugud w.e.f. 29.5.1982 on the grounds that he did not improve his work and conduct is proper, legal and just ? What relief the workman is entitled to ?”

2. After the receipt of the reference, notices were issued to both parties. In response to the notice, second party workmen filed his statement of claim Ex.4. According to the second party workman, he was appointed as Cash-cum-Accounts Clerk in Bank of India, Khalapur Dist. Raigad Branch w.e.f. 1.10.1981. His services came to be terminated by the bank w.e.f. 29.5.1982 without assigning any reason for such termination. The said termination according to him

is totally illegal. He was not given opportunity to submit his side or written statement before the management/authorities of Bank of India at the time of said termination.

3. According to him, the Branch Manager had demanded Rs.25,000/- to him for making the services confirmed with the bank. The said Branch Manager is biased towards him. As such he had made several correspondences with the Zonal Manager on or after 29.5.1982 upto May 2013. He had issued legal notice on 8.2.1984 through his advocate. The said notice has not relied by the concerned officer of the Bank of India. Therefore, he had also made several correspondences to the Secretary, Dept. of Finance Banking, Govt. of India, New Delhi. Commissioner of Central Vigilance Commission, New Delhi, has forwarded the matter to CVO, Bank of India, Head office Mumbai for necessary action but then he has not received any reply from CVO, Bank of India. He is therefore asking for compensation of Rs.30 lakhs from Bank of India and he is also asking for the job in Bank of India for his daughter.

4. First party management has resisted the claim by filing written statement Ex.5 contending therein that the statement of claim itself does not fall within the scope and ambit of provisions of I.D. Act, 1947. The workman's demand for compensation and for the employment of his daughter cannot be considered as per Industrial Dispute Act. The workman has neither challenged his termination as been either illegal or unjustified and neither he had prayed for any consequential relief. It is then contend by the management that cause of action challenged in the present proceedings pertains to the termination of probationary appointment of the workman on 29.5.1982. The workman has raised the dispute after a lapse of 30 years and therefore the reference is hit by laches and delay. In view of inordinate delay the reference is liable to be rejected with cost.

5. It is then contention of the management that the services of the workman were terminated as his work and performance was not satisfactory during the probation period. He was appointed in the bank as clerk vide appointment letter dated 1.10.1981 and was placed on probation for a period of six months. Clause 3 of the said letter of appointment categorically stated that if the workman fails to attain the required standards as regards to his work and conduct, the bank may extend his probation period for 3 months or terminate his services without notice and without assigning any reason. However, the workman's performance and conduct during his probation period was unsatisfactory. Accordingly, the workman's probation period was extended for the period of 2 months w.e.f. 1.4.1982 vide Zonal Office Memorandum dated 24.03.1982. The workman's performance and conduct continued to remain unsatisfactory even during the extended probation period. Several adverse remarks were being received against the workman such as leaving premises of branch without prior authorization, remaining unauthorisely absent from duties, unsatisfactory and indecent behavior towards his colleagues and staff for which he was issued two memos dated 12.5.1982 and 14.5.1982. Even during the first five months of its initial probation period the workman had taken leave without pay for 49 days. In view of unsatisfactory service of workman, his services came to be terminated vide letter dated 19.5.1982. The termination was to take effect from 29.5.1982 and along with letter of termination he was paid an amount of Rs.1,278.72 being pro rata salary for the month of May 1982 and one months pay in lieu of notice. The said letter was received by the workman on 29.5.1982. As such the services of workman have been terminated for proper reasons i.e. unsatisfactory work and conduct during his period of probation. It has thus sought rejection of reference with costs.

6. Following issues are framed at Ex.8. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the reference is hit by delay and laches ?	Yes
2.	Whether the action of the first party management in terminating the services of the second party workman Shri Mahendra Kantilal Dugud w.e.f. 29.5.1982 legal and proper ?	Yes
3.	If not, whether the concerned workman is entitled to the compensation of Rs.30 lakhs and employment to his daughter as prayed for ?	No
4.	What relief the workman is entitled to ?	As per final order
5.	What Order ?	As per final order

REASONS**Issue No.1.**

7. Admittedly the services of the second party workman were terminated w.e.f. 29.5.1982. It is undisputed that he was appointed as Cash-cum-Accounts Clerk w.e.f. 1.10.1981 as probationer. It is thus undisputed that the dispute has been raised by the second party workman in the year 2012 i.e. after 30 years and as such there is delay of 30 years in raising the dispute. The delay has not been explained. Even though it was tried to believe that the workman had made correspondences with the bank Manager, Zonal Manager, on or after 29.5.1982 i.e. after the termination order upto 1.5.2013 and then thereafter he has issued legal notice dt. 8.2.1984 through his advocate to the Branch Manager, Zonal Manager and General Manager of Bank of India. But then the fact remains that he has not raised the dispute before the authority during the period these 30 years. Even though he has made the correspondences to the authorities concerned, that correspondence itself is not sufficient. There is no provisions in the I.D. Act which require the workman to first approach any authority before approaching the consilation machinery provided under the I.D. Act.

8. In this context, the reference can be made to the decision in case of Executive Engineer, Public Works Dept. Warda Vs. Namdev Govindrao Nandurkar 2011 II CLR 46 wherein it has been observed in para 19 of the judgment that the fact that workman was making repeated representation is not sufficient to explain the delay. It is held that it is for the employee to explain the delay by furnishing the acceptable explanation to the satisfaction of the court or that he was not responsible for the delay caused. Making repeated representation cannot be a ground to condone the delay.

9. Here in instant case the concerned workman has not filed any application for condoning the delay and the delay has not been condoned. The delay is of 30 years. It appears therefore that the concerned workman kept quiet for 30 years. This inaction on the part of workman goes to the root of matter.

10. It is well settled recognized principle of jurisprudence that right not exercised for long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings in such cases the courts have coined doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities". In view of this principle in those cases where the period of limitation is prescribed within which the action is to be brought before the court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce legal right after the period of limitation period is over. Likewise in other cases where no limitation is prescribed but for a long period aggrieved party does not approach the machinery provided under the law in redressal of his grievance, it can be presumed for relief can be denied on the ground of un-explanation delay and laches and / or on the presumption that such person has waived his right or acquiescence to the act of other. If a person does not exercise his right for the long time, such right is non-existent. These observations I borrow from the decision in the case of Prabhakar V/S. Jt. Director Sericulture Dept. & Anor. 2015 III CLR 937 wherein it is held that the reference is hit by the laches of delay when the workman raised the dispute after 15 years and appropriate government had no jurisdiction or power to refer the dispute.

11. So far as facts of present case are concerned, the workman has raised the dispute after 30 years. Delay of 30 years has not been explained and in view of that it can be held that the present reference is hit by delay and laches. This issue is therefore answered accordingly in the affirmative.

Issue No.2

12. Admittedly as per appointment order dated 1.10.1981 the concerned workman was appointed in the bank as clerk and was placed on probation for the period of six months. Clause III of said appointment order categorically stated that if the workman fails to attain the required standard as regards to his work and conduct his probation period may be extended for 3 months or his services can be terminated without notice and without assigning any reason. As such his appointment was as a temporary employee.

13. So far as contention go, it is the contention of the management that the performance of the workman during his probation period was most unsatisfactory, therefore probation period was extended by a period of 2 months w.e.f. 1.4.1982 vide Zonal office memorandum dated 24.3.1982. Even thereafter his conduct and performance continued to remain unsatisfactory even during the extended probation period. There were several adverse remarks against the concerned workman. He remained absent without proper authorization and during first 5 months of his initial probation period, he had taken leave without pay for 49 days.

14. In this respect if we see the evidence of concerned workman, he admits that his appointment as clerk was on probation for six months. He even admits that his probation period was extended & a letter to that effect was issued by the bank. The letter is at Ex.11. It is also admitted that the bank has issued the letter Ex.12. On going through both the letters Ex.11 & 12, it clearly appears that the performance & conduct of the concerned workman was not satisfactory for the reasons stated in these letters and he was asked to improve his performance & conduct. But then it appears that he had not improved his performance & conduct and therefore his services came to be terminated before expiry of his

extended period of probation. It is admitted by the concerned workman that bank had never issued him a letter of confirmation and that his services came to be terminated even before the expiry of extended period of probation.

15. As a matter of fact, it also appears that memos were issued to concerned workman on 12.5.1982 and 14.5.1982 by the bank Manager asking him his explanation why he stayed away during the work hours without proper authority which amounted to misconduct. Considering all these facts and admissions given by the workman it can be said that his termination is on the ground that during the period of probation, his performance & conduct was not satisfactory. He remained absent unauthorisedly even during the period of probation and ultimately by the letter of termination dated 19.5.1982 his services came to be terminated. Even it is admitted by the concerned workman that he received a letter of termination Ex.30. He even admitted that bank has paid him one months pay and allowances in lieu of notice. It is admitted by him that he received pro-rata salary of May 1982. In view of all these facts, it can be said that termination of services of concerned workman is legal and proper.

16. In the respect, Learned Counsel for management seeks to rely on decision in case of Hukumchand Khundia V/S. Chandigarh Administration 1998 (78) FLR 529 to submit that when the services of the probationer came to be terminated simplicitor without attaching any stigma on the ground that the records found unsatisfactory then that termination is not arbitrary or capricious.

17. In view of this legal position also and in view of the facts in the present case, I find that the termination of the concerned workman on the ground that his performance was unsatisfactory & that on the ground of unsatisfactory work during the probation period itself, is just legal and proper. Hence I answer issue No.2 accordingly in affirmative.

Issue No.3, 4 & 5.

18. In view of my findings to the above Issues, the concerned workman is not entitled to any reliefs and therefore the reference is liable to be rejected. Thus, the order.

ORDER

Reference is rejected with no order has to costs.

Date: 14.02.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 30 मार्च, 2017

का.आ. 854.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 2/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-12012/87/2016-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2017

S.O. 854.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 30.03.2017.

[No. L-12012/87/2016-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 15th March, 2017

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 2/2017

(In the matter of the dispute for adjudication under clause 2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010). between the Management of Punjab National Bank and their workman)

BETWEEN :

Sri K. Pounraj : 1st Party/Petitioner

AND

The Functional Manager (HRD) : 2nd Party/Respondent
 Punjab National Bank, HRD Department
 Circle Office, Khandha Enclave
 179 Sarojini Street
 Ramnagar
 Coimbatore – 641009

Appearance:

For the 1st Party/Petitioner : M/s. S. Arunachalam Associates, Advocates

For the 2nd Party/Management : -

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/87/2016-IR (B-II) dated 12.01.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the action of the Management of Punjab National Officer, Circle Officer, Coimbatore in estopping Sri K. Pounraj, an Ex-Part Time Sweeper from service w.e.f. 01.07.2015 and consequential attendant benefits are legal and justified? If not, to what relief, the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 2/2017 and issued notices to both sides. The petitioner has entered appearance through his counsel.

3. The petitioner has directly filed ID 40/2016 before this Tribunal challenging denial of work to him by the Respondent and the same is pending. The counsel for the petitioner has made an endorsement that he is not proceeding with this dispute as ID 40/2016 is pending. So the ID is only to be closed.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 15th March, 2017.)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked :**On the petitioner's side**

Ex. No.	Date	Description
	NIL	

On the Management's side

Ex. No.	Date	Description
	NIL	

नई दिल्ली, 30 मार्च, 2017

का.आ. 855.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिन्डीकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 272/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-12012/158/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 30th March, 2017

S.O. 855.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 272/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 30.03.2017.

[No. L-12012/158/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 272/2011

Shri Rajiv Bhatia,
M-138, GS Apartments,
Sector 13, Rohini,
Delhi – 1010 085

...Workman

Versus

The Assistant General Manager,
Syndicate Bank,
Sarojini House, 6 Bhagwan Dass Road,
New Delhi – 110 001

...Management

AWARD

In the present case, an order was received from Ministry of Labour and Employment vide letter No.L-12012/158/2003-IR(B-II) dated 20.11.2003 under clause (d) of sub-section (1) and Section (2A) of Section 10 of Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

‘Whether the action of the management of Syndicate Bank, New Delhi in dismissing Shri Rajiv Bhatia, clerk, is justified? If not, what relief the workman is entitled to and what date?’

2. Parties were put to notice, and statement of claim was filed by Shri Rajiv Bhatia, claimant herein. It is clear from the statement of claim that the claimant herein was working as clerk with Syndicate Bank (in short the management) with effect from 14.10.1983 and his last drawn salary was Rs.10,300.00. Work and conduct of the claimant was satisfactory and there was no complaint against the claimant. It is the case of the claimant that when he was posted at Dev Nagar branch, an officer, Shri D.K. Khanna made a false complaint and charge sheet dated 08.09.1998 was served which pertained to an incident of 22.02.1993. Late issuance of the charge sheet cum suspension letter, i.e. after a gap of 5 ½ years of the alleged incident by itself smacked of malice and ill will, resulting in violation of principles of natural justice. Moreover, there was no explanation for the inordinate delay on the part of the management in issuance of the charge sheet. Claimant participated in the enquiry and the Enquiry Officer was, in fact, not independent and was a friend of Shri D.K. Khanna, on whose instance entire disciplinary proceedings were initiated against the claimant.

3 Claimant denied the allegations made in the charge sheet and he was also denied opportunity to put forward his defence in the enquiry as the Enquiry Officer refused to adjourn the enquiry on 16.04.1999 despite the fact that the claimant bed ridden and had intimidated the management. Enquiry Officer seemed to be in a hurry to conclude the proceedings by ignoring principles of natural justice. In fact, there was no complaint of any customer against the claimant. Despite this, the Enquiry Officer returned finding of guilt and the claimant was dismissed from service vide letter dated 15.12.1999. In fact, enquiry against the claimant was ex-parte in nature and the same is in violation of principles of natural justice. Appeal was filed by the claimant, which was disposed of within 30 days on 12.04.2000. Lastly, the claimant has prayed that an award be passed by declaring his termination to be illegal and unjustified under the law, with reinstatement and payment of back wages.

4. Claim was contested by the management who filed written statement to the statement of claim, taking preliminary objections, inter alia of concealing of material facts etc. It is denied that there was any enmity between the claimant and official of the management. It is also denied that the above charge sheet was due to any kind of personal enmity. In fact, the claimant has misappropriated the case accepted from a customer by issuing fake counterfoil and without accounting the same in the books of account of the management. He also made fictitious entries in the pass book of the customer and when this fact came to the notice of the management, he was immediately placed under

suspension. Charges leveled in the charge sheet are very serious in nature, as such, departmental enquiry was conducted against the claimant, resulting in his dismissal from service as claimant was found guilty.

6. Rejoinder on behalf of the claimant to the statement of defence of the management was filed, wherein the claimant has reasserted the stand taken in the statement of claim and denied the material averments contained in the written statement.

7. Against this factual background, my learned predecessor vide order dated 22.09.2005, framed the following issues:

- (i) Whether the enquiry conducted by the management is fair and proper?
- (ii) As in terms of reference

8. The case was transferred to Central Government Industrial Tribunal cum Labour Court No.II, New Delhi vide Ministry of Labour and Employment vide order No.Z-22019/6/2007 dated 11.02.2008 and was thereafter retransferred to this Tribunal vide order No.Z-22019/6/2007-IRC-II dated 30.03.2010.

9. Issue No.1 was treated as preliminary issue as it pertained to domestic enquiry and thereafter opportunity was afforded to both the parties to adduce evidence. This Tribunal vide order dated 29.02.2012, after considering evidence on issue No.1 came to the conclusion that there is no violation of principles of natural justice and also said that there was possibility of bias in the above enquiry. Enquiry Officer has also abdicated his responsibility by seeking advice from the disciplinary authority, which shows that he was working under the dictates of his superiors. All these aspects resulted in holding the enquiry to be unfair and against principles of natural justice. Resultantly, issue No.1 was decided in favour of the claimant and against the management. It is, further clear from the record that the management had reserved the right in case enquiry is held to be violative of principles of natural justice, it may be allowed to prove misconduct of the claimant on merits.

10. As a sequel to the above right reserved by the management, this Tribunal granted opportunity to the management to adduce evidence on merits qua the charges of misconduct.

11. Management in support of its case examined Shri S.L. Prasad, Chief Manager as MW2, Shri A.K. Gupta, Director, Truth Lab as MW3 and Shri Harish Kumar Menghi, Senior Judicial Assistant as MW4, whose affidavits are Ex.MW2/A, Ex.MW3/A. Shri Menghi was examined on oath. To rebut the case of the management, claimant examined himself as WW1 and his affidavit is Ex.WW1/B.

12. I have heard Shri Rajesh Mahindru, A/R for the management. None appeared on behalf of the claimant to advance arguments on his behalf.

13. Now, the main question in the main case is whether the claimant herein is guilty of allegations leveled against him in charge sheet. Before I proceed to consider the comparative merits of the submissions, it is necessary to delineate the charges mentioned in the charge sheet cum suspension letter Ex.MW1/1, and the same is reproduced hereunder:

‘It is alleged against you as under:

That prior to your transfer to our Dev Nagar branch you were working as clerk at BBM DTC depot Extension Counter attached to our GTB Nagar branch. While working as such, it has been reported against you that on 02.02.1993 you unauthorizedly issued two counterfoils, one for Rs.5300.00 towards the credit of SB 690 of Shri Harish Kumar and another for Rs.100.00 towards credit of CD 1956 of Shri Harish Kumar without accounting /remitting the amounts received by you to the bank and further made fictitious entries for Rs.5300.00 in the ledger sheet and pass book of SB 690 and of Rs.100.00 in the pass book of CD 1956.’

The above allegations against you are quite serious and highly detrimental to the interest of the bank and as such warrants deterrent action against you. Moreover, because of your above fraudulent acts, we feel that your continuous presence in the branch is highly prejudicial to the interest of the bank. Hence, you are hereby placed under suspension with immediate effect under the provisions of the Bipartite Settlement under Clause 19.12(b).

During the period of your suspension, you will be paid subsistence allowance as per the provisions of service conditions applicable to you as infra:

- a. For the first three months of the suspension, one third of the pay and allowances which the workman would have got but for the suspension
- b. For the period of suspension, if any, thereafter, one half of the pay and allowances which the workman would have got but for the suspension

- c. Full salary after one year provided the matter is internally dealt with by the bank and the enquiry is not delayed due to any reasons attributable to you. In case the matter is taken up for investigation or prosecution by an outside agency, you will be paid subsistence allowance as per the provisions of BPS applicable in that situation'

You are required to take prior permission before entering the branch even for the purpose of operating your account from the Chief Manager or other authorized officer.

If it is found that you are misusing the above facilities in any manner, your account is liable to be closed and the balance amount be sent to you by pay order. You are also required to furnish your permanent/postal address for the purpose of future correspondence with you. You are also required to inform us before leaving the headquarters during the pendency of the disciplinary proceedings contemplated against you.

Your above acts also constitute gross misconduct within the meaning of clause No.19.5 of the bipartite settlement. You are, therefore, charged with gross misconduct of 'doing acts prejudicial to the interest of the bank vide clause 19.5(j) of the bipartite settlement.'

14. Reply filed by the claimant to the charge sheet is WW1/1. Bare perusal of the reply filed by the claimant would clearly show that he has not admitted the allegations made in the charge sheet against him.

15. In order to prove the allegations against the claimant, management examined Shri S.L. Prasad, whose affidavit is Ex.MW2/A. It is clear from the statement of this witness that he has investigated the matter with respect to allegations of irregularities committed by the claimant, which are fully mentioned in the charge sheet. He has further deposed that Shri Harish Kumar Menghi was maintaining SF account No.690 and CD account No.1956 at BBM Depot, GTB Nagar, Delhi. Further, the said Shri Harish Kumar Menghi handed over cash of Rs.5300.00 to the claimant herein for crediting the same in his SF account No.690 and Rs.100.00 for credit to his CD account No.1956 on 02.02.1993. It was thereafter that the claimant issued counterfoil for the same mentioning the above amount and handed over the same to the customer Shri Menghi. Claimant has also made entries in the pass book of the said customer. However, the amount in question, in fact, was not deposited at the Extension Counter. Claimant has also affixed rubber stamp of the Extension Counter on the counterfoil. Subsequently in the month of March 1993, claimant has made fictitious entry in the ledger in respect of SF Account No.690 as 'By cash' – Rs.5300.00. However, later in it was found that no such cash was deposited by the claimant. This witness has also recorded statement of the claimant during the course of investigation and the claimant could not deny his signatures on the counterfoils.

16. Regarding the above document, management has also obtained opinion from GEQD, Shimla on 30.07.1998 and the documents in this regard are Ex.MW1/19 and Ex.MW1/20. Copy of counterfoils dated 01.02.1993 and 02.02.1993 is Ex.MW1/32 and Ex.MW1/33. Copy of ledger sheet of SB account No.690 is Ex.MW1/34. Copy of CD account No.1956 is Ex.MW1/35 and Ex.MW1/36. Cheque dated 18.05.1993 and 28.06.1993 etc. has been exhibited as Ex.W1/18 to Ex.MW1/26. It has also come in evidence that in February 1993 claimant was performing duties at Extension Counter BBM Depot, GTB Nagar, New Delhi as ledger clerk. Further, claimant was for the first time interrogated regarding these entries and non deposit of amount belonging to Shri Harish Kumar Menghi on 20.12.1996 by this witness, Shri S.L. Prasad, MW2. It is also clear that cross examination of the witness that in cash scroll register dated 02.02.1993, there is no mention of deposit of Rs.5300.00. It has also come in evidence that the customer Shri Harish Kumar Menghi had handed over an amount of Rs.5300.00 to the claimant, which fact even the claimant has not denied in his evidence.

17. At this stage, it is also appropriate to refer to the statement of WW1 Shri Rajiv Bhatia whose subsequent affidavit is Ex.WW1/B. He has admitted in his affidavit that he was working with the management since 14.10.1983 as clerk and charge sheet 08.09.1998 pertain to incident of 22.03.1993 when he was posted at BBM Extension Counter, GTB Nagar, Delhi. He further deposed that none from the management made any preliminary enquiry prior to serving of charge sheet. He further deposed that he participated in the domestic enquiry conducted by the management. In para 14 of his affidavit, he has stated that in the account of Shri Harish Kumar Menghi, management had also made entry of Rs.5000.00 in cash in his account vide receipt dated 05.04.1994 and this amount was against Rs.5300.00 which was not credited to his account against receipt dated 02.02.1993 Ex.MW1/33. Amount of Rs.5300.00 was wrongly shown deposited by the bank in account No.690 of Shri Harish Kumar Menghi till he deposited Rs.5000.00 on 05.04.1994.. He admitted in his cross examination that as ledger clerk, he was supposed to enter all the slips in the ledger and tally the amount of slips with the entries on record. These slips were cash slips, Transfer slips, clearing slips etc. He also used to receive cheques from customers. He gave an evasive reply that he was not sure whether he was working on the seat of cashier on 02.02.1993. However, he admitted that he used to sign the counterfoils of cheques in the capacity of clerk. He has further admitted that Shri Harish Kumar Menghi was having his account at the aforesaid Extension Counter as an employee of High Court of Delhi.. Shri Menghi was known to him as customer of the Bank. He further stated that when a customer issues cheque in favour of someone which has been tendered at the Extension Counter, then the concerned clerk would look into the ledger and in case insufficiency of amount in the account to meet the

money of the instrument, in that eventuality, the cheque is kept on one side without making the entry. He further made a vital admission that during morning hours of 02.02.1993, Shri Menghi met him. However, he has denied that he filled the pay in slip and handed over money in cash for deposit in his accounts. He further deposed that Shri Menghi had given him two slips alongwith one cheque for Rs.5400.00 for deposit in his SF account and sum of Rs.100 in cumulative deposit account. To my mind, this is totally in contradiction with the stand taken by this witness in his pleadings in his statement of claim as well as other evidence on record.

18. At this stage, it is also appropriate to refer to the statement of Shri Harish Kumar Menghi MW4. He has deposed that in the year 1993 he was maintaining SF account as well as CD account at the Extension Counter at BBM Depot, Dev Nagar, New Delhi. He also referred to his earlier submission made during the departmental enquiry against the claimant. He has supported his earlier statement Ex.MW4/1. It is clear from overall examination of Shri Menghi that he has, in fact, given cash and not cheque to the claimant for deposit of the same in his account. It was later on that he came to know through officials of the bank during audit inspection that an amount of Rs.5300.00 has not been deposited in his account.

19. Management had also examined Shri A.K. Gupta, Handwriting Expert MW3. He has made a detailed statement and it is clear that he has concluded in his report that after carefully examining the questioned and standard signatures, disputed writings etc., he was of the opinion that the person who wrote blue enclosed writing and signatures marked S1 to S3, A1 to A 52, A 52/1 and A53 to A 64 also wrote the red enclosed signatures marked Q1, Q2 and the writing in red enclosed signatures marked Q1, Q2 and writing in the red enclosed part marked Q3.

20. There is not much cross examination of this witness on any material point. However, overall examination and the statement of this witness that admitted signatures of the claimant herein tally with the questioned documents sent to the expert. Report of the expert is Ex.MW3/36. It is pertinent to mention here that my learned predecessor while deciding the vires of enquiry has observed that examination of this witness was necessary so as to adjudicate the controversy. In the present case, claimant has not turned up on several dates of hearing prior to advancing of arguments, as a result of which this Tribunal was left only with the submissions made by the management to decide the fate of the present case.

21. Admittedly, Shri Harish Kumar Menghi was maintaining SF account No.690 and CD No.1956 and he has handed over cash to the claimant amounting to Rs.5300.00 for credit to his SF account No.690 and Rs.100.00 for deposit to his CD Account No.1956 on 02.02.1993. Evidence is also clear that the claimant has issued counterfoil to Shri Menghi, MW4. Claimant has also made entries in the pass book of the said customer as he was working on that seat as is clear from his own admission. Claimant has also affixed the rubber stamp of the Extension Counter in having received the cash. It was subsequently noticed when the amounts did not tally that it came to the notice of the bank during audit inspection that the above amount was in fact not deposited by the claimant in the SF account. Claimant has in fact made fictitious entry in the books of the bank in SF No.690 by mentioning 'By cash – Rs.5300.'. Statement of MW2, Investigating Official also prove that the above entries of Rs.5300.00 was in the hands of the claimant herein, who has not deposited the money. Counterfoils dated 01.02.1993 and 02.02.1993 are Ex.MW1/32 and Ex.MW1/33, copy of ledger sheet of Account No.690 is Ex.MW1/23 as well as copy of credit slip dated 08.05.93 is Ex.MW1/29 and specimen signatures provided by the bank are Ex.MW1/39. Statement of Shri A.K. Gupta, Handwriting Expert also support the case of the management that it was the claimant who has made the above entries in the SF account of Shri Harish Kumar Menghi. Even a bare look of the credit slip and admitted signatures clearly shows that signatures on Ex.MW1/32 and Ex.MW1/33 are of the claimant and thus the claimant has failed to deposit the said amount in the accounts of the bank. There is no reason for Shri Harish Kumar Menghi MW4 to speak against the claimant herein. He was admittedly a customer of the bank who was known to the claimant and it was on account of this reason that Shri Harish Kumar Menghi handed over the amount for deposit to the claimant. Defence of the claimant that the customer handed over cheque is also false as no details of cheque are mentioned on the counterfoil, which is mandatorily to be filled by a customer and claimant was also required to verify the same and this fact has duly admitted by the claimant in his cross examination. Further, if the customer had handed over cheque to the claimant herein, he would have insisted for filling of particulars of cheque before putting his signatures. He has used seal of the cashier. There is another reason to falsify the defence of the claimant herein regarding deposit of the amount of cheque. It is clear that there were two slips of Rs.5300.00 and Rs.100.00 which were duly tendered to be deposited by Shri Harish Kumar Menghi in his account. Both these accounts are having separate numbers and in fact there would have been two cheques for the amount so deposited by cheques in the respective accounts. Claimant has stated that Shri Harish Kumar Menghi handed over one cheque for Rs.5400.00, which cannot be true as it is admitted case that one was for amount of Rs.5300.00 and the other was Rs.100.00 and both the amounts were required to be deposited in separate accounts. Since there is no record of such cheque with the bank nor it is case of Shri Harish Kumar Menghi in his complaint Ex.MW4/1 that he has handed over any cheque to the claimant, which also clearly shows that in fact an amount of Rs. 5300.00 + Rs.100.00 = Rs.5400.00 were separately given to the claimant for deposit in the accounts mentioned above.

22. Net result of the above discussion is that the claimant has indulged in misappropriation of the amount amounting to cheating and forgery in the records of the bank, which is a very serious offence and is of grave nature. No lenient

view in such like cases can be taken by this Tribunal when misconduct regarding misappropriation of money, cheating etc. has been established against the claimant. It is now fairly settled that once an act of misappropriation/cheating is proved against an official of the bank, there is no question of showing any uncalled for sympathy in favour of such a person. In view of this, it is held that the claimant is guilty of misconduct and the punishment of 'dismissal, awarded by the disciplinary authority is justified and is, hereby, upheld. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 23, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 856.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, पोस्ट विभाग, राजकोट, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 33/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-40012/151/2004-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 856.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 33/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Department of Post, Rajkot, Gujarat and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40012/151/2004-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 9th December, 2016

Reference: (CGITA) No. 33/2005

The General Manager,
Department of Post,
Rajkot Division,
Rajkot (Gujarat)

...First Party

V/s

The President,
Saurashtra Employees' Union,
City Shopt, 3rd Floor,
Opp. Jaganath Police Chowky,
Dr. Yagnik Road,
Rajkot (Gujarat)

...Second Party

For the First Party : Shri P.M. Rami

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/151/2004-IR(DU) dated 23.03.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Department of Posts, Rajkot in terminating the services of Shri Natwarbhai Khetabhai Rathod, an ED Mailman with effect from 08.12.1999 is legal and justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 23.03.2005. Both the parties submitted the statement of claim Ext. 5 and written statement Ext. 9. Thereafter the second party submitted the examination in chief/affidavit Ext. 13 on 29.12.2011. Since then the workman avoided his cross-examination by the first party advocate. Second party was given number of opportunity to appear and put in for cross-examination but to no result. The advocate for the first party Shri P.M. Rami moved applications on 27.06.2013, 10.10.2013, 22.01.2014, 14.07.2016 and lastly on 09.12.2016 Ext. 18, 19, 20, 21 and 22 respectively, requesting the tribunal for closure of the second party evidence but second party workman did not responds to these applications. Therefore it appears that the second party workman is not willing to prosecute the case and all the applications are allowed. Evidence of the second party is closed. The aforesaid affidavit/examination in chief Ext. 13 has no evidentiary value. Thus the second party workman has failed to prove his case.

2. Therefore, the reference is disposed of, in the absence of the second party with an observation as under: “the action of the management of Department of Posts, Rajkot in terminating the services of Shri Natwarbhai Khetabhai Rathod, an ED Mailman with effect from 08.12.1999 is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 857.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप-विभागीय अधिकारी, दूर संचार विभाग, कच्छ, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1078/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-40012/105/97-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 857.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 1078/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Sub-Divisional Officer, Telecom Department, Kutch, Gujarat and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40012/105/97-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 22nd November, 2016

Reference: (CGITA) No. 1078/2004

The Sub-Divisional Officer,
Telecom Department, Phones,
Bhuj, Kutch (Gujarat) – 370201

...First Party

V/s

The President,
Saurashtra Employees Union,
Umesh Commercial Complex, Office No. 213 & 214,
2nd Floor, Near Chaudhary High School,
Rajkot (Gujarat)

...Second Party

For the First Party : Shri P.V. Kharsaw

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/105/97-IR(DU) dated 02.02.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the T.D.M./Sub-Divisional Officer, Phones, Bhuj in terminating/not taking on duties/discontinuance of Sh. Dalbahadur Jairam Pasi, Casual Labour w.e.f. 30.10.89, just, valid and legal? If not to what benefits the workman is entitled for and what directions are necessary in the matter?”

1. The reference dates back to 02.02.1998. The second party submitted the statement of claim Ext. 2 on 24.04.2002. The first party submitted the written statement Ext. 9 on 09.03.2009. Since then the second party has been absent and has not preferred to lead evidence. Thus it appears that the second party is not willing to prosecute the reference.
2. Thus the reference is disposed of with an observation as under – “the action of the T.D.M./Sub-Divisional Officer, Phones, Bhuj in terminating/not taking on duties/discontinuance of Sh. Dalbahadur Jairam Pasi, Casual Labour w.e.f. 30.10.89, just, valid and legal.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 858.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडिंग ऑफिसर, एयर फोर्स स्टेशन, बड़ौदा, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1426/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-14012/49/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 858.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 1426/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Commanding Officer, Air Force Station, Baroda, Gujarat and their workman, which was received by the Central Government on 04.01.2017.

[No. L-14012/49/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 22nd December, 2016

Reference: (CGITA) No. 1426/2004

The Commanding Officer,
Air Force Station, Makarpura,
Baroda (Gujarat)

...First Party

V/s

Shri Malik Arjun Rao,
H. No. A/17, M.S. Colony,
Rajiv Nagar, PO Makarpura,
Baroda (Gujarat) – 390014

...Second Party

For the First Party : Shri Kiran P. Chauhan

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-14012/49/2003-IR(DU) dated 12.07.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Airforce Station, Baroda, relating to termination of services of the workman Sh. Malik Arjun Rao was legal, proper and justified? If not, to what relief the concerned workman Sh. Malik Arjun Rao is entitled to and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 12.07.2004. The second party submitted the statement of claim on 18.08.2004 while pending in the Industrial Court, Vadodara. The first party submitted the written statement Ext. 4 on 12.05.2006. Later the reference was transferred to this tribunal but both the parties were not turned up. Therefore, this tribunal issued notice to both the parties to appear on 08.04.2012 but neither of the parties turned up till date. Thus it appears that both the parties are not willing to prosecute the matter.
2. Therefore, the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the action of the management of Airforce Station, Baroda, relating to termination of services of the workman Sh. Malik Arjun Rao was legal, proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 859.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रिंसिपल जनरल मैनेजर, बीएसएनएल, बड़ौदा, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 59/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-40011/22/2008-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 859.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 59/2010) of the Central Government Industrial Tribunal-cum-

Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Principal General Manager, BSNL, Baroda, Gujarat and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40011/22/2008-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 22nd November, 2016

Reference: (CGITA) No. 59/2010

The Principal General Manager,
Telecom Distt., BSNL, Karelibaug,
Baroda (Gujarat) – 390018

...First Party

V/s

The District Secretary,
National Federation Telcom Employees Union (BSNL),
B-45, Sushil Society, Nr. Snehal Printing Press,
New VIP Road,
Vadodara (Gujarat) – 390019

...Second Party

For the First Party : Shri Bhargav D. Thakkar

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/22/2008-IR(DU) dated 16.02.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Principal General Manager, Telecom District, Bharat Sanchar Nigam Limited, Baroda in making recovery of Rs. 50000/- in 36 instalments from the salary of Shri P.B. Gore, Regular Mazdoor is legal and justified? If not, to what relief the workman is entitled to?”

1. The reference dates back to 16.02.2009. The second party submitted the statement of claim Ext. 6 on 29.07.2009. The first party submitted the written statement Ext. 10 on 15.12.2009 along with number of documents vide list Ext. 11. Since then the second party has been absent and has not preferred to lead evidence. Thus it appears that the second party is not willing to prosecute the reference.

2. Thus the reference is disposed of with an observation as under - “the action of the management of Principal General Manager, Telecom District, Bharat Sanchar Nigam Limited, Baroda in making recovery of Rs. 50000/- in 36 instalments from the salary of Shri P.B. Gore, Regular Mazdoor is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 860.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट ऑफिस के वरिष्ठ अधीक्षक, मेहसाना, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 520/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-40012/179/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 860.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 520/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Senior Superintendent of Post Offices, Mehsana, Gujarat and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40012/179/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st November, 2016

Reference: (CGITA) No. 520/2004

The Sr. Supdt. Of Posts Offices,
Mehsana Division,
Mehsana (Gujarat)

...First Party

V/s

Shri Jitendra Ramanlal Nayak,
C/o Nalin U. Bhatt, B-201,
Sardar Patel Chambers, Vasant Chawk, Bhadra,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri P.M. Rami

For the Second Party : Shri G.K. Parmar

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/179/2002-IR(DU) dated 11.10.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether Shri Jitendra Ramanlal Nayak having completed 275 days in the 1993 and 250 days in 1996 is entitled for retrenchment notice and compensation? If yes, what relief the concerned workman is entitled to?”

1. The reference dates back to 11.10.2002. Both the parties put in their appearances in consequences of notice issued to them by the tribunal.
2. The second party submitted his statement of claim Ext. 6 wherein he has stated that the second party Jitendrakumar Ramanlal Nayak had been working as postman in Sub Post Office, Sadar Chowk, Unjha District Patan since 13.05.1991 as a daily wager for Rs.75/- per day. He was given payment on monthly basis by way of voucher whereon the second party used to put his signature on the wages register on an Rs.1/- stamp. His work was of permanent nature. He was required to distribute the posts, maintained register and sale/give the stamps to the customers. He had been doing his work sincerely, faithfully and diligently. His working record was clean and unblemished. He was required to perform his duties from 07:30 in the morning to 05:00 PM every day. But without disclosing any reason, his services were terminated on 01.07.1998 without paying any legal dues and also without notice despite the fact that he worked for more than 240 days in each year. He was not paid any retrenchment compensation at the time of termination of his services which was violative of the provisions of Section 25(f) of the Industrial Disputes Act. The work was of permanent continuous nature but the first party employed new person in his place without giving any opportunity to him to be reemployed which is also violative of Section 25(h) of the Industrial

Disputes Act. Thus the action of the first party was alleged to be illegal, unreasonable and violative of the provisions of the Industrial Disputes Act, therefore, second party has prayed for reinstatement with back wages.

3. The first party submitted his written statement wherein the first party has alleged that the statement of claim is based on false and vague averments and require to be rejected. Second party was engaged as outsider postman in the leave vacancy of regular incumbent. The recruitment of postman cadre is being done as department rules and procedure amongst the employees of Gramin Dak Sevaks, therefore, the department did not commit violation of any provisions of Section 25(f) and (h) of the Industrial Disputes Act. As the second party was engaged as outsider postman in leave vacancy of regular incumbents and he was disengaged on joining back of regular increments, so the question does not arise to pay any retrenchment compensation or other legal dues. Thus the prayer sought by the second party deserves no merit. Hence the same is liable to be dismissed.

4. After the perigal of the pleadings, the following issue is to be decided –

- a. Whether Shri Jitendra Ramanlal Nayak having completed 275 days in the 1993 and 250 days in 1996 is entitled for retrenchment notice and compensation?

5. In support of the pleadings, the second party workman filed his affidavit Ext. 19 where he reiterated that the second party workman Shri Jitendera Ramanlal Nayak worked/completed 275 days in 1993 and 250 days in 1996. Nothing has been come out contrary to his aforesaid statement in his cross-examination made by the first party advocate.

6. In rebuttal of the aforesaid evidence of the second party workman, the first party witness namely Siraj Mansuri, Assistant Superintendent of post stated that the workman was dismissed on 01.07.1998 who was a temporary employee. But he admitted that he was appointed on daily wages basis on a permanent post. He also admitted that he worked for more than 240 days in each year. He was used to be paid Rs. 75/- per day. He further admitted that the said workman used to put his attendance in the roll of permanent employee.

7. Thus in the aforesaid evidence clearly reveals that the second party was appointed though on daily wages basis but on a permanent post and he was dismissed summarily without holding any enquiry into his misconduct what so ever it may be. Thus the action taken by the first party was in violation of the provisions of Industrial Disputes Act.

8. Thus, I come to the conclusion that the action taken by the first party was in violation of the provisions of Industrial Disputes Act. Therefore, the second party workman is entitled for reinstatement in service with immediate effect however he will not be entitled for the back wages.

9. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 861.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राष्ट्रपति, मर्चेंट नेवी ऑफिसर्स और सिमैन एसोसिएशन, कच्छ, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में केन्द्रिय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 36/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-40012/152/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 861.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 36/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the President, Merchant Navy Officers and Seamen's Association, Kutch, Gujarat and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40012/152/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 22nd November, 2016

Reference: (CGITA) No. 36/2013

The President,
Merchant Navy Officers and Seamen's Association,
Marine Club Building,
New Kandla, Kutch (Gujarat)

...First Party

V/s

Shri Rakesh B.,
C/o D-129, Maheshwari Colony,
New Kandla, Kutch (Gujarat)

...Second Party

For the First Party : Shri Rajendrasinh B. Zala

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/152/2012-IR(DU) dated 25.02.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Marine Club, Kandla in terminating the services of Shri Rakesh B. is justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 25.02.2013. Later, the second party submitted a copy of declaration cum affidavit vide application Ext. 6 which shows that he has settled the matter with the first party and does not want to prosecute the reference.
2. Thus the reference is dismissed as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 862.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, बानासकांठा एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 90/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-40012/38/2007-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 862.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 90/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Bharat Sanchar Nigam Ltd., Banaskantha and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40012/38/2007-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 20th December, 2016

Reference: (CGITA) No. 90/2007

The General Manager,
Bharat Sanchar Nigam Ltd.,
Jorawar Palace,
Palanpur, Banaskantha

...First Party

V/s

Shri Parthibhai G. Patni
C/o General Secretary,
Adarsh Mazdoor Union, S/16, Rajmandir Complex,
Near Mahaprabhuji's Bethak, Naroda,
Ahmedabad (Gujarat)

...Second Party

For the First Party :

For the Second Party : Shri V.S. Patil

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/38/2007-IR(DU) dated 11.09.2007 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the workman Shri Parthibhai Galbabbhai Patni, for reinstatement of services by the management of BSNL, Palanpur, w.e.f. 01.06.1998 is legal and justified? If so, to what relief the workman is entitled to?”

1. The reference dates back to 11.09.2007. The second party submitted the statement of claim Ext. 4 on 15.09.2007 and first party submitted the written statement Ext. 8 on 09.04.2009. Since then the second party has been absent and has refrained to lead evidence. Thus it appears that the second party is not willing to prosecute the reference.
2. Thus the reference in the absence of the second party evidence is disposed of with the observation as under: “the demand of the workman Shri Parthibhai Galbabbhai Patni, for reinstatement of services by the management of BSNL, Palanpur, w.e.f. 01.06.1998 is not legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 863.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप-विभागीय अधिकारी, दूरसंचार विभाग, सुरेंद्रनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1045/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.02.2017 को प्राप्त हुआ था।

[सं. एल-40012/40/96-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 863.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 1045/2004) of the Central Government Industrial Tribunal-

cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Sub-Divisional Officer, Telecom Department, Surendranagar, Gujarat and their workman, which was received by the Central Government on 28.02.2017.

[No. L-40012/40/96-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th February, 2017

Reference: (CGITA) No. 1045/2004

1. The Sub-Divisional Officer,
Telecom Deptt.,
Surendranagar (Gujarat) – 363001
2. The Divisional Engineer/Telegraphs,
Telecom Deptt.,
Surendranagar (Gujarat) – 363001

...First Party

V/s

1. Shri Rajdev Ram Ramsigar Ram,
C/o shri Satnarayanbha , ST No. 7, Shivnagar, Gondal Road,
Jaybajrang Circle Store, Rajkot – 360001
2. The President,
Saurashtra Employees Union,
Umesh Commercial Complex,
213-214, 2nd Floor, Near Chaudhary High School,
Rajkot – 360001

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/40/96-IR(DU) dated 04.03.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Sub-Divisional Officer, Telegraphs, Telecom Deptt., Surendranagar in terminating the services of Shri Rajdev Ram Ramsigar Ram, Casual Labour is legal and justified? If not, to what relief the workman is entitled?”

1. The reference dates back to 04.03.1997. The second party submitted the statement of claim Ex. 2 on 04.08.1997 and the first party submitted the written statement Ex. 6 on 22.09.1997. Since then the second party workman is absent. A fresh notice was issued to both the parties on 10.02.2011 to appear on 14.04.2011. The advocate for the second party sought time on 26.04.2016 but the second party workman in person is always absent to lead evidence. Therefore, it appears that the second party has no willingness to prosecute the case.
2. Thus, the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the action of the management of Sub-Divisional Officer, Telegraphs, Telecom Deptt., Surendranagar in terminating the services of Shri Rajdev Ram Ramsigar Ram, Casual Labour is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 864.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाकघर का अधीक्षक, डाक विभाग, जामनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 122/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.02.2017 को प्राप्त हुआ था।

[सं. एल-40012/76/2005-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 864.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 122/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Superintendent of Post Offices, Department of Post, Jamnagar, Gujarat and their workman, which was received by the Central Government on 28.02.2017.

[No. L-40012/76/2005-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th February, 2017

Reference: (CGITA) No. 122/2006

The Superintendent of Post Offices,
Department of Post, Jamnagar Division,
Jamnagar (Gujarat) – 361001

...First Party

V/s

Smt. Leelavatiben M. Joshi Derafali,
Opp. Murli Mandir, Bal Mukund Derry,
Khambalia,
Jamnagar (Gujarat)

...Second Party

For the First Party : Shri P.M. Rami

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/76/2005-IR(DU) dated 17.05.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Superintendent of Post Offices, Department of Posts, Jamnagar in terminating the services of Smt. Leelavatiben M. Joshi, orally, although she was having temporary status and was working since 15.11.1981 is legal and justified? If not, what relief the workman concerned is entitled to?”

1. The reference dates back to 17.05.2006. The second party submitted the statement of claim Ex. 5 on 21.09.2006 and the first party submitted the written statement Ex. 10 on 25.06.2007. The reference was transferred to this tribunal on 01.11.2010. Both the parties issued notice Ex. 17 but the second party did not appear and failed to lead evidence. Thus it appears that the workman's widow is not willing to prosecute the reference.

2. Therefore, the reference is disposed of in non-prosecution of the reference by the second party workman's widow with the observation as under: "the action of the management of Superintendent of Post Offices, Department of Posts, Jamnagar in terminating the services of Smt. Leelavatiben M. Joshi, orally, although she was having temporary status and was working since 15.11.1981 is legal and justified."

3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 865.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार जिला अभियंता, दूरसंचार विभाग, जामनगर और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1095/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.02.2017 को प्राप्त हुआ था।

[सं. एल-40012/47/97-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 865.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 1095/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Telecom Distt. Engineer, Telecom Department, Jamnagar and others and their workman, which was received by the Central Government on 28.02.2017.

[No. L-40012/47/97-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th February, 2017

Reference: (CGITA) No. 1095/2004

1. The Telecom Distt. Engineer,
Telecom Department,
Jamnagar - 361001
2. The Assistant Engineer,
Microwave Maintenance, New Telephone Exchange,
Jam-Khambaliya, Jamnagar
3. The Divisional Engineer,
Telecom Microwave Maintenance,
K.R. Telephone Exchange, Rajkot - 360001
4. The Divisional Engineer,
Telecom Microwave Maintenance,
K.R. Telephone Exchange,
Ahmedabad - 380001

...First Party

V/s

Shri Babu Rana Baria,
C/o Shri G.S. Uppal,

Plot No. 381, Ward No. 2-B,
Adipur, Kutch (Gujarat) – 370205

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/47/97-IR(DU) dated 16.04.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Telecom Dist. Engineer, Jamnagar/Divisional Engineer, Telecom Microwave Maintenance, Ahmedabad/Rajkot and Asstt. Engineer, Microwave Maintenance, Khambhalia, in not taking on duties/discontinuance/terminating the services of Shri Babu Rana Baria w.e.f. 02.01.1998 just, valid and legal? If not, what benefits the workman is entitled for and what directions are necessary in the matter?”

1. The reference dates back to 16.04.1998. The second party submitted the statement of claim Ex. 3 on 09.11.1998 in Industrial Tribunal Rajkot. The first party submitted the written statement Ex. 7 on 25.06.2001 that too in Industrial Tribunal Rajkot. Later on 15.01.2008, the reference was transferred to this tribunal. Since then the second party has been absent and failed to lead evidence despite issuing notice Ex. 18 on 24.02.2011 to appear on 13.04.2011 but the second party did not appear.
2. The advocate for the first party, Shri H.R. Raval moved an application Ex. 20 on 13.04.2011 with an affidavit, death certificate and succession certificate disclosing that the workman has expired on 27.10.2004. Therefore, repeated notices Ex. 23 and Ex. 25 were issued to the widow of the workman to appear on 15.03.2013 and then 18.04.2016 but despite repeated notices, the widow of the workman did not appear to lead evidence or to prosecute the case. Thus it appears that the second party has not willing to prosecute the case.
3. Therefore, the reference is disposed of in the absence of the evidence of the second party workman's widow with the observation as under: “the action of the Telecom Dist. Engineer, Jamnagar/Divisional Engineer, Telecom Microwave Maintenance, Ahmedabad/Rajkot and Asstt. Engineer, Microwave Maintenance, Khambhalia, in not taking on duties/discontinuance/terminating the services of Shri Babu Rana Baria w.e.f. 02.01.1998 just, valid and legal.”
4. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 866.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सहायक अभियंता, नई टेलीफोन एक्सचेंज, जामनगर एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 927/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.02.2017 को प्राप्त हुआ था।

[सं. एल-40012/83/90-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 866.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 927/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Assistant Engineer, New Telephone Exchange, Jamnagar and their workman, which was received by the Central Government on 28.02.2017.

[No. L-40012/83/90-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th February, 2017

Reference: (CGITA) No. 927/2004

The Assistant Engineer,
Microwave Maintainance, New Telephone Exchange,
Jam-Khambaliya,
Jamnagar – 361001

...First Party

V/s

Shri Babu Kanabhai Bariya,
Marfat Shri Jagdish C. Joshi Advocate,
1, Dhikanta Road,
Rajkot (Gujarat) – 360001

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri J.C. Joshi

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/83/90-IR(DU) dated 31.01.1991 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Asstt. Engineer, Microwave (Maintainance) Jam-Khambaliya, Jamnagar in terminating the services of Shri Babu Kanabhai Bariya w.e.f. 02.01.1989 is justified? If not, to what other relief the workman is entitled?”

1. The reference dates back to 31.01.1991. The second party filed the statement of claim Ex. 9 on 23.03.1993. Earlier the reference was pending in the Industrial Tribunal, Rajkot. The first party did not file the written statement there. Later the reference was transferred to this tribunal and the first party filed the vakalatpatra Ex. 35 of his advocate Harish R. Raval on 30.01.2011. But the second party workman did not turn up in the tribunal, therefore, on 07.02.2011, a notice was issued to the workman to appear on 25.04.2011 but he did not turn up. Thereafter on 17.01.2013, again a notice was issued to the second party workman's widow to appear on 27.10.2015 as a zerox affidavit annexed with succession certificate was filed on 29.01.2010 but despite repeated notice to re-appear on 18.04.2016, none responded on number of dates since 18.04.2016. Thus it appears that the workman's widow is not willing to prosecute the reference.
2. Therefore, the reference is disposed of in non-prosecution of the reference by the second party workman's widow with the observation as under: “the action of the management of Asstt. Engineer, Microwave (Maintainance) Jam-Khambaliya, Jamnagar in terminating the services of Shri Babu Kanabhai Bariya w.e.f. 02.01.1989 is justified.”
3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप-विभागीय अधिकारी, दूरसंचार विभाग, गांधीधाम, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में निर्यात और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1079/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-40012/77/96-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 867.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 1079/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Sub-Divisional Officer, Telecom Department, Gandhidham, Gujarat and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40012/77/96-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 22nd November, 2016

Reference: (CGITA) No. 1079/2004

The Sub-Divisional Officer,
Telecom Department,
Gandhidham (Gujarat) – 370201

...First Party

V/s

Sh. Mohammad AnamulHaque,
c/o M.M. Ansari,
Telecom Exchange,
Adipur (Gujarat) – 370205

...Second Party

For the First Party : Shri P.V. Kharsaw

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/77/96-IR(DU) dated 24.01.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Sub-Divisional Officer, Telecom Department, Gandhidham in terminating the services of Sh. Mohammad AnamulHaque in 1986 and whether the workman is justified in raising the dispute after a lapse of more than 10 years? If so what relief the affected parties are entitled to?”

1. The reference dates back to 24.01.1998. The second party submitted the statement of claim Ext. 2 on 18.03.1998. The first party submitted the written statement Ext. 11 on 23.07.2008. Since then the second party has been absent and has not preferred to lead evidence. Thus it appears that the second party is not willing to prosecute the reference.
2. Thus the reference is disposed of with an observation as under – “the action of the management of Sub-Divisional Officer, Telecom Department, Gandhidham in terminating the services of Sh. Mohammad Anamul Haque in 1986 and the workman is justified in raising the dispute after a lapse of more than 10 years.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 मार्च, 2017

का.आ. 868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, बीएसएनएल, पालनपुर एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1236/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-40012/91/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 31st March, 2017

S.O. 868.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 1236/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Palanpur and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40012/91/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd November, 2016

Reference: (CGITA) No. 1236/2004

The General Manager,
BSNL, New Telephone Exchange Building,
Jorawal Palace, Banaskantha,
Palanpur (B.K.) – 385001

...First Party

V/s

Sh. Baldevbhai S. Makwana,
C/o Shramjivi Kamdar Sangh, Pitamber Mehta Madh,
Moti Bazar Road,
Palanpur (B.K.) – 385001

...Second Party

For the First Party : Shri P.I. Shah & Shri S.J. Parikh

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/91/2003-IR(DU) dated 31.07.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of BSNL, Palanpur not to give employment to workman Shri Baldevbhai S. Makwana is justified or legal? If not, what relief the workman is entitled for and since when?”

1. The reference dates back to 31.07.2003. The second party submitted the statement of claim Ext. 7 on 20.06.2004. The first party submitted the written statement Ext. 10 on 13.12.2005. Since then, the second party has been absent and has not preferred to lead evidence.
2. Therefore, it appears that the second party has not been willing to prosecute the reference. Thus the reference has been disposed of for want of evidence of the second party as under – “the action of the management of BSNL, Palanpur not to give employment to workman Shri Baldevbhai S. Makwana is justified or legal.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2017

का.आ. 869.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 96/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-22012/333/2002-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 3rd April, 2017

S.O. 869.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 96/03) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Limited and their workmen, received by the Central Government on 30.03.2017.

[No. L-22012/333/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/96/2003

Shri Manaram S/o Shri Baboliya Kumharm
Hai Niwas Gate Dafai, Bhalumade,
Ward No.12, Po Kotma Colliery,
Thana Bhalumada,
Distt. Shahdol

...Workman

Versus

Chief General Manager,
SECL, Hasdeo Area,
PO Sough Jhagrakhand Colliery,
Distt. Korea (CG)

Sub Area Manager,
SECL,
Kurja Sub Area of Hasdeo Area,
PO Bijuri,
Distt. Shahdol

...Management

AWARD

Passed on this 2nd day of March, 2017

1. As per letter dated 19-5-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/333/2002-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of South Eastern Coalfields Limited in dismissing Shri Manaram S/o Shri Baboliya Kumhar, Cable man from services vide order dated 3-4/8/2001 is legal and justified? If not, to what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 2/1 to 2/6. Workman has reiterated that enquiry was not properly conducted against him. Criminal proceeding was also initiated against workman before JMFC Kotma. During pendency of criminal proceeding, enquiry conducted against workman is illegal. Various inconsistencies in the Enquiry Proceedings and documents are narrated in statement of claim under caption “a, b”. That corrected Enquiry Report was submitted on 23-3-2011 is illegal. The inconsistencies in record of enquiry are also narrated under caption “c,d,e,f”. It is reiterated that enquiry conducted against workman was bogus, illegal. Punishment imposed against workman on the basis of illegal findings of Enquiry Officer is illegal. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 10/1 to 10/11. 2nd party contends that workman had committed gross misconduct of abusing, threatening, assaulting his senior officer. Complaint was received from Shri K.R.Bind Sr. Under Manager on 13-12-2005. Shri K.R.Bind was proceeding to office on scooter. Workman abused threatened, and

assaulted him asking why his attendance was cut (cancelled). After issuing chargesheet, enquiry was conducted on various dates, statements of management's witnesses were recorded. Witness of management were cross-examined. Enquiry was conducted following principles of natural justice. Charges against workman were found proved as per the report submitted by Enquiry Officer. For proved misconduct, workman did not adduce evidence in support of his defence. Punishment was imposed against workman.

4. As per order dated 24-11-2015, enquiry conducted against workman is found legal.
5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. Point No.1,2:- As per order dated 24-11-15, enquiry conducted against workman is found legal, question remains for consideration whether charges alleged against workman are proved from evidence in Enquiry Proceedings. Record of enquiry is produced at Exhibit M-1,2,3. Enquiry Proceedings is produced at Exhibit W-4. Management's witness Shri K.R.Bind, Motilal Patel in their statements in Enquiry Proceedings they have stated that while Shri K.R.Bind was coming on scooter, workman had abused in name of his mother, sister, he given slaps on his face. He fell on ground. The evidence is fully corroborated by witness Motilal Patel. Witness No.3 Ramawatar has corroborated their evidence that he had seen Mr. Bind lying on the ground. His scooter was lying, Shri K.R.Bind was taken to hospital. All the witnesses were cross-examined on the point of time of incident, presence of witnesses at the relevant time. The scope of judicial review in the matters of enquiry, evidence cannot be re-appreciated. Evidence of management's witness is sufficient to prove the charge alleged against workman. On the point, learned counsel Shri A.K.Shashi relies on ratio held in Case between

West Bokaro Colliery versus Ram Pravesh Singh reported in 2009-I-LLJ-220(SC) . Their Lordship dealing with Section 11-A of ID Act held interference by Tribunal that findings in domestic enquiry not warranted standard of proof in departmental proceedings different from that in criminal case.

Considering the evidence of management's witness in Enquiry Proceedings, I record my finding in Point No.1 in Affirmative.

7. Point No.2: In view of my finding in Point No.1, charges alleged against workman are proved, question remains for consideration whether punishment of dismissal imposed against workman is proper and legal. Charge proved against workman pertains to abusing, assaulting, threatening.

8. Learned counsel for management Shri A.K.Shashi relies on ratio held in case between

Union of India versus A.Nagamalleswar Rao reported in AIR-98-SC-111. Their Lordship dealing with charge of obtaining appointment by disclosing incorrect percentage of marks in SSC exam. Dismissal of respondent was found proper.

Mahendra Nissan Allwyns Ltd versus MP Siddappa and another reported in 1999-SCC(L&S) 1067. Their Lordship dealing with quantum of punishment held considering that security guard entering room of Sr.Officer, threatening and abusing him and another officer in filthy language and misbehaving with certain other officers of the company. Punishment of dismissal was held not disproportionate.

New Shorrock Mills and Maheshbhai T.Rao reported in 1997-I-LLJ-1212 respondent was found guilty of misconduct. The discharge of workman from service as badly worker with immediate effect was not interfered. The facts of above cited cases are not comparable.

9. Shri A.K.Shashi also submitted copy of award in R/4/04, R/70/99. Each case needs to be decided considering evidence in the case. The awards submitted for perusal cannot be relied even for persuasion purpose.

10. Considering the proved charge against workman pertains to assaulting, abusing in name of mother and sister of Shri R.K.Bind, punishment of dismissal imposed against workman calls no interference. Point No.2 is answered in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of South Eastern Coalfields Limited in dismissing Shri Manaram S/o Shri Baboliya Kumhar, Cable man from services vide order dated 3-4/8/2001 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2017

का.आ. 870.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 20/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-22012/158/98-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 3rd April, 2017

S.O. 870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/99) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Eastern Coalfields Limited and their workmen, received by the Central Government on 30.03.2017.

[No. L-22012/158/98-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 20 OF 1999

PARTIES :

The management of Khas Kajora Colliery of M/s. ECL

v/s

Sri Sarfuddin Mia

REPRESENTATIVES :

For the management : Sri P. K. Das, Learned Advocate

For the union (Workman) : Sri Prasanta Banerjee, Learned Advocate

INDUSTRY: COAL

STATE : WEST BENGAL

Dated : 21.03.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/158/98-IR(CM-II)** dated 22.03.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Khas Kajora Colliery of M/s. ECL in not providing dependent employment to the dependent son-in-law of Sh. Sarfuddin Mia, Ex-U.G.Loader is legal and justified? If not, to what relief the workman is entitled? ”

1. Having received the Order **NO. L-22012/158/98-IR(CM-II)** dated 22.03.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **20 of 1999** was registered on 30.03.1999. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Sarfuddin Mia has alleged in his written statement that he was working as Under Ground Loader in Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited with his substantive designation as Under Ground Loader. He was declared medically unfit w.e.f. 07.02.1989 while he was in service of the company. A fake person claimed employment in place of his dependent son and the same was objected by Smt. Jubeda Khatun wife of Sri Sarfuddin Mia. The wife of Sri Sarfuddin Mia also represented that she has no sons but two daughters. She nominated her dependent son-in-law Sri Entaz Mia for employment against the loss of employment of Sri Sarfuddin Mia. At conciliation proceeding employers took the plea that Sri Sarfuddin Mia named the nominee at his own will, so the objection of Smt. Jubeda Khatun can not be considered for employment in letter dated 31.07.1997, Assistant Labour Commissioner (Central) , Raniganj. Management also took the plea that since Sri Sarfuddin Mia is alive and his wife does not have any right or authority to nominate any person for employment. The employers did not categorically stated, whether Sri Sarfuddin Mia has nominated any person for employment. Employers are probably taking advantage of illiteracy of Sri Sarfuddin Mia and took his Left Thumb Impression in some forms under which Sri Sarfuddin Mia might have shown to have nominated some body as his son. In fact Sri Sarfuddin Mia has no sons and has not signed any paper with the knowledge that he has nominated somebody as his son. ‘Gram Panchayet’ has issued a certificate to the effect that Smt. Jubeda Khatun is wife of Sri Sarfuddin Mia and Smt. Munia Khatun and Miss. Rashida Khatun are his daughters and also that Sri Entaz Mia alias Sri Imtaz Mia is a dependent son-in-law of Sri Sarfuddin Mia. Sri Sarfuddin Mia for himself as well as his wife Smt. Jubeda Khatun wrote a letter dated 18.12.1992 addressed to the General Manager, clearly nominating his son-in-law Sri Entaz Mia alias Sri Imtaz Mia, son of Sri Aziz Mia for employment. But in spite of the said position the employers have not given the said dependent any employment. The nomination of Sri Entaz Mia by Sri Sarfuddin Mia for employment is quite valid and justified. The employer does not have any legal ground for withholding or not proving employment for such a long time. The workman has prayed that Award may be passed declaring that Sri Entaz Mia alias Sri Imtaz Mia, dependent son-in-law of Sri Sarfuddin Mia be provided employment with retrospective effect.

3. The Agent/Chief Manager, Mining of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has filed written statement. He has alleged that Sri Sarfuddin Mia, Ex-Under Ground Loader in Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited was declared medically unfit while in service in the year 1989 as per provisions contained in National Coal Wage Agreement –IV. The Ex-workman nominated one person named Sri Darsh Mia by declaring him as his son for providing employment in his favour. As per service record of the concerned ex-workman the name of Sri Darsh Mia was mentioned as his son. On receipt of said application employment proposal was duly processed by the management and in course of proceeding a complaint was received on 04.11.1989 from on Smt. Jabida Khatun wife of Sri Sarfuddin Mia that the person nominated by her husband Sri Sarfuddin Mia is a fake person and he is not a member of their family. On receipt of the said complaint the employment proposal was stopped by the management of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited for bona fide reason. As the person nominated by the workman was a fake person so the very proposal for employment was turned down by the management and there is no scope of entertaining any further claim for employment in favour of dependent son-in-law of Sri Sarfuddin Mia. Since Sri Sarfuddin Mia is alive his wife does not any have any claim or authority to nominate any person for employment. It is incorrect that Sri Sarfuddin Mia has never nominated any person for employment in his place. It is incorrect that management has taken any advantage of the illiteracy of the concerned workman and took his Left Thumb Impression in some form for nomination of any person as son of Sri Sarfuddin Mia. Once the nomination is made for employment on medical ground the nomination becomes final and the workman can not alter his proposal by adopting any further choice as per his suitable. Management had or has no legal obligation to entertain such baseless demand of proving employment to allege son-in-law of Sri Sarfuddin Mia. The action of management is justified. The Agent of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has prayed that the Tribunal may kindly hold the action of management is totally justified in not providing employment to the dependent son-in-law of the Ex-workman Sri Sarfuddin Mia and the concerned workman is not entitled to any relief.

4. Workman has filed certificate of 'Panchyat Sachiv' as well as 'Anchal Adhikaari'.

Workman Sri Sarfuddin Mia has filed his own affidavit and affidavit of Sri Ismile Mia in his oral evidence. Sri Sarfuddin Mia and Sri Ismile Mia are cross-examined by the learned advocate of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited.

The Agent of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has not filed any documentary or oral evidence.

5. I have heard Sri Prasanta Banerjee, learned workman appearing on behalf of the workman Sri Sarfuddin Mia and Sri P. K. Das, learned advocate appearing on behalf of the management of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited.

6. Sri P. K. Das, learned advocate on behalf of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has argued that the claimant could not prove that he is son-in-law of Sri Sarfuddin Mia. Since claim of Sri Sarfuddin Mia was not bona fide the management of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has rejected the employment proposal of Sri Sarfuddin Mia. On the other hand Sri Prasanta Banerjee, learned advocate on behalf of the workman Sri Sarfuddin Mia has argued that there is no son of Sri Sarfuddin Mia and his wife Smt. Jubeda Khatun. They have only two daughters. Sri Entaz Mia alias Sri Imtaz Mia is the husband of elder daughter of Sri Sarfuddin Mia and he is dependent on his father-in-law, Sri Sarfuddin Mia. So he is entitled for job.

7. It is admitted fact that Sri Sarfuddin Mia is Ex-Under Ground Loader in Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. It is also admitted fact by both the parties that he was declared medically unfit in the year 1989 by the Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited during service period. National Coal Wage Agreement - IV is a joint bi-partite agreement between the management and the union. Rule 9.4.3 provides as under :-

"Employment to one dependant of a worker who is permanently disabled in his place:

The dependant for this purpose means the wife / husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed daughter / widowed daughter in-law residing with the employee and almost wholly dependant on the earnings of the employees may be considered."

8. PW-1, Sri Sarfuddin Mia has stated in his affidavit that he is a illiterate person. He worked at Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited as Under Ground Loader till his service was taken away on medical ground. He is married to Smt. Jubeda Khatun. Out of this wedlock he has 2 (Two) daughters. Sri Entaz Mia alias Sri Imtaz Mia, the husband of his elder daughter Smt. Munia Khatun is his dependent son-in-law. He has nominated Sri Entaz Mia alias Sri Imtaz Mia for employment. He has not nominated anybody except his son-in-law for employment. He was cross-examined at length by the learned advocate of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. Even in his cross-examination he has supported his allegation stated in his affidavit. There is no reason to disbelieve the statement made on oath by Sri Sarfuddin Mia. Another witness examined on behalf of the workman Sri Ismile Mia son of Sri Bhagu Mia. Sri Ismile Mia has stated that he was an employee of No. 2 Madhabpur Colliery of M/s. Eastern Coalfields Limited. He is illiterate person he is acquainted with Sri Sarfuddin Mia and his wife Smt. Jubeda Khatun. The elder daughter of Sri Sarfuddin Mia and Smt. Jubeda Khatun has been staying with her husband in the residence of Sri Sarfuddin Mia as his dependent. Sri Ismile Mia has been cross-examined by the learned advocate of the Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. 'Panchyat Sachiv' as well as 'Anchal Adhikaari' of Karmatand has issued certificate to the effect that Sri Entaz Mia alias Sri Imtaz Mia is son-in-law of Sri Sarfuddin Mia.

9. The allegation of the Agent of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited that Sri Sarfuddin Mia nominated his son namely Sri Darsh Mia for employment is as per service record of Sri Sarfuddin Mia. But Sri Sarfuddin Mia has categorically denied this fact in his oral evidence stated on oath. It is relevant to mention that service record is maintained by the employer. If in fact Sri Sarfuddin Mia, the ex-workman has nominated any other person for employment as son namely Sri Darsh Mia and this fact is entered in service record it necessarily ought to have been filed by the Agent of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. This could have been the best evidence to refute the allegation of Sri Sarfuddin Mia the ex-workman. As per Section 106 of Evidence Act the burden to prove fact is upon the person who alleges the fact. The burden of proof that Sri Sarfuddin Mia nominated any other person was upon the Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. No documentary evidence or even oral evidence has been filed by Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited to refute the allegation of Sri Sarfuddin Mia. The copy of service record has not been filed. The Hon'ble Apex Court in **Gopal Krishnaji Ketkar v/s Mohd. Haji Latif and Others, AIR 1968 SC 1413** has held that :-

“Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.”

10. In view of above discussion the action of management of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited in not providing employment to the dependent son-in-law of Sri Sarfuddin Mia, Ex-Under Ground Loader is illegal and unjustified. The dependent son-in-law of Sri Sarfuddin Mia namely Sri Entaz Mia alias Sri Imtaz Mia is entitled for employment.

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2017

का.आ. 871.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 55/07) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.03.2017 को प्राप्त हुआ था।

[सं. एल-22012/103/2007-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 3rd April, 2017

S.O. 871.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/07) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Eastern Coalfields Limited and their workmen, received by the Central Government on 21.03.2017.

[No. L-22012/103/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 55 OF 2007

PARTIES :

The management of Chinakury Colliery of M/s. ECL

V/s

Sri Kirtan Pradhan

REPRESENTATIVES :

For the management : Sri P. K. Das, Learned Advocate

For the union (Workman) : Sri S. Mahato, Learned Advocate

INDUSTRY: COAL

STATE : WEST BENGAL

Dated : 03.03.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/103/2007 - IR(CM-II)** dated 09.07.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of M/s. ECL in terminating the services of Shri Kirtan Pradhan vide their letter No.CKI/C-6/W-I/04/661 dated 31.03.2004 is legal and justified? If not, to what relief is the workmen entitled?”

1. Having received the Order **NO. L-22012/103/2007 - IR(CM-II)** dated 09.07.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **55 of 2007** was registered on 24.07.2007/26.07.2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.
2. Case called out. The workman Sri Kirtan Pradhan is personally present.
3. On perusal of the record it is found the case was taken up for hearing on 08.02.2017. The workman Sri Kirtan Pradhan was present in person. He has endorsed on the order sheet that he does not intend to proceed with the case. He has requested to close the reference. Therefore Tribunal has no option left but to close the case.
4. As such the case is closed and accordingly a ‘**No Dispute Award**’ is hereby passed.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2017

का.आ. 872.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आरएपीएस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 51/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/146/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 3rd April, 2017

S.O. 872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial Dispute between the management of RAPS and their workmen, received by the Central Government on 01.03.2017.

[No. L-42012/146/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 51/2015

Reference No. L- 42012/146/2005-IR (CM-II) Dated: 2.6.2015

The General Secretary
Parmanu Vidhyut Karmchari Union (CITU)
Phase-2, PO : Rawatbhata via Kota
(Rajasthan) – 323305.

V/s

The Site Director
Rajasthan Atomic Power Station Unit 1 & 2
PO : Anushakti, Rawatbhata via Kota
(Rajasthan) – 323303.

AWARD**20.12.2016**

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“ Whether the action of the Site Director, RAPS 1&2, Rawatbhata by denial the promotion to Sh. Sushil Kumar Govil in the Trademan E to Trademan F is correct and justified? If not, to what relief the workman is entitled to and from which date.”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 7.12.2015 for filing statement of claim. On 7.12.2015 learned advocate Sh. Rajendra Gupta appeared & alleged that Sh. Dharmendra Jain, Advocate is learned representative for opposite party who is not able to come in appearance today & he will file authority on behalf of opposite party on next date. He further alleged that Sh. Jagdish Gupta, Advocate shall file authority on behalf of applicant. Accordingly, service against both the parties was held sufficient & 18.1.2016 was next date fixed for filing statement of claim by applicant. On 18.1.2016 learned advocate Sh. Jagdish Gupta appeared on behalf of applicant & requested to adjourn the case providing opportunity to the applicant to file statement of claim on next fixed date 28.3.2016. Sh. Rajendra Gupta, Advocate appeared & requested for time to file authority on behalf of opposite party.

3. On 28.3.2016 learned representative for both the parties appeared but statement of claim was not filed on behalf of applicant. Presiding Officer was on leave. Case was adjourned fixing 23.5.2016 for filing statement of claim. On 23.5.2016 adjournment was sought by applicant side for filing statement of claim on next fixed date 22.8.2016. Sh. Rajendra Gupta, Advocate appeared on behalf of opposite party & asked for time to file authority on behalf of non-applicant on 22.8.2016. On 22.8.2016 both the parties were absent. Case was adjourned by tribunal on its own motion fixing 26.9.2016 for filing statement of claim by applicant with observation that if claim is not filed by 26.9.2016 the reference will be disposed in absence of statement of claim by passing award.

4. On 26.9.2016 learned representative for applicant appeared & requested for time to file statement of claim. Learned representative on behalf of non-applicant Sh. Rajendra Gupta, advocate appeared. Adjournment was granted with last opportunity to applicant to file statement of claim on 7.11.2016. On 7.11.2016 Sh. Jagdish Gupta, advocate learned representative appeared & mentioned on the 'NOTE SHEET' that he does not have any instruction from the applicant. None appeared on behalf of opposite party. Looking into the fact that on 22.8.2016 last opportunity was given to the applicant to file statement of claim by 26.9.2016, hence, applicant was further provided one more last opportunity for filing statement of claim by 21.11.2016. It is pertinent to note that applicant, the General Secretary, Parmanu Vidhyut Karmchari Union (CITU), Phase-2, PO : Rawatbhata via Kota (Rajasthan) – 323305, has been personally served with registered notice in this case but he has never appeared before the tribunal & Sh. G.R.Meena has consented & appointed Sh. Jagdish Gupta, Advocate as his learned representative on 18.1.2016.

5. On 21.11.2016 none appeared on behalf of applicant. Sh. Rajendra Gupta, advocate appeared for non-applicant & alleged that Sh. Suresh Kashyap, advocate shall file statement of claim in this case. No statement of claim was filed on 21.11.2016 by anyone, however, case was adjourned by tribunal on its own motion fixing 19.12.2016 for filing statement of claim by applicant with direction that if statement of claim is not filed further proceeding in the case shall come to end. On 19.12.2016 none appeared on behalf of both the side, hence, further opportunity to file statement of claim & further proceeding in the case was closed & case was reserved for award.

6. It is pertinent to note that reference order dated 2.6.2015 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding against the reference under adjudication on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2017

का.आ. 873.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 136/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.03.2017 को प्राप्त हुआ था।

[सं. एल-22012/270/2000-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 3rd April, 2017

S.O. 873.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 136/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 07.03.2017.

[No. L-22012/270/2000-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 136/2002

Ref. No. L-22012/270/2000-IR(C-II) dated 11.07.2002

BETWEEN

State Secretary
Bharatiya Khadya Nigam Karamchhari Sangh,
5-6, Habibullah Estate, Hazratganj,
Lucknow

AND

1. Sr.Regional Manager,
Food Corporation of India,
5-6, Habibullah Estate,
Hazratganj,
Lucknow
2. The District Manager,
Food Corporation of India,
Elite Cinema Building,
Civil Lines, Jhansi

AWARD

1. By order No. L-22012/270/2000-IR(C-II) dated 11.07.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between State Secretary, Bhartiya Khadya Nigam Karmchhari Sangh, Lucknow and the Sr.Regional Manager/District Manager, Food Corporation of India, Lucknow for adjudication.

2. The reference under adjudication is:

1. **“WHETHER THE ACTION OF THE MANAGEMENT OF FOOD CORPORATION OF INDIA IN NOT PROMOTING SH. SHITAL PRASAD TA III TO TA.II W.E.F. 10.06.1991 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED TO?”**
2. **WHETHER THE ACTION OF THE MANAGEMENT OF FOOD CORPORATION OF INDIA IN NOT GRANTING SELECTION GRADE TO SH. SHITAL PRASAD W.E.F. 1.12.1989 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED TO?”**

3. As per the claim statement paper no.7, the petitioner has stated in brief that the workman Sri Shital Prasad was promoted vide order dated 09.01.1990, passed by opposite party no.2, from the post of TA III to TA-II, and in furtherance of that order opposite party no.3 has directed and relieved him for joining at the office of Sr. Manager, Chandigarh, Haryana, the workman submitted his joining report accordingly on 26.01.1990, but vide letter dated 28.12.1990 the Sr. Regional Administrator, Chandigarh informed that due to some orders from Hon'ble Supreme Court the joining of the workman was not accepted, and direction was issued to the workman to return to his original place of posting.
4. It has further been stated in the claim statement that request was made by the workman for his promotion, since the promotion matter of the other employees have been cleared by the Hon'ble Supreme Court, but the workman was informed that his promotion could not be realized due to penalty order dated 28.09.1991. The workman has alleged that earlier promotion order was issued vide letter dated 09.11.1990. The petitioner has asserted that even after penalty period was over on 31.12.1991, opposite party no.2 referred the matter to opposite party no.1 vide letter dated 6.2.1993 but promotional order has not been released so far despite several letters. The union has emphasized that the workman had joined as T.A.III on 22.9.77, and he was entitled to selection grade on 1.12.1989, since there is procedure in FCI to grant selection grade to those employees who have completed 12 years of service in one grade. With the aforesaid pleadings the petitioner has requested to grant promotion to the workman from TA III to TA II from 10.6.1991 from the date when other employees junior to him have been promoted along with all consequential benefits. Further selection grade w.e.f. 1.12.1989 has also been sought.
5. The management in its written statement A2-13, has denied the allegations leveled in the claim statement and has submitted that the workman Sri Shital Prasad was promoted to the post of TA-II vide order dated 9.11.1990 and Senior Regional Manager's order dated 29.11.1990, accordingly he was relieved to join his new place of posting on the promotional post vide another order dated 11.12.1990 and 14.12.1990 and the promotion was to take effect from the date of joining and without prejudice the claim of other seniors to him as TA-II, but keeping in view compliance of order of Hon'ble Supreme Court in in said order the joining report of workman of Mr. Shital Prasad was not accepted and the matter was kept in abeyance.
6. The opposite party has further stated that in pursuance of the order passed by Hon'ble Supreme Court workman remained as TA III and he was informed the proceedings and reasons for not enforcing his promotion order. It is further stated that prior to release of the promotion order, a fresh Vigilance enquiry was contemplated against the workman vide memo dated 3.5.1991 and he also submitted his explanation but subsequently he was found guilty. After taking lenient view, penalty of stoppage of one increment without cumulative effect in the year 1992 and the recovery of TA amount with interest was imposed. Therefore the request of the workman for releasing the promotion was turned down by the competent authority as not sustainable since he was found guilty and consequent penalty was awarded. Promotion orders were cancelled vide another letter dated 16.12.1994 issued by Zonal Manager and the Regional Manager communicated to him vide letter dated 16.3.1995. The management has denied the arbitrary or illegal action. The workman has made wrong and derogatory remarks, although he himself was liable and promotion order was rightly refused.
7. The opposite party has stressed that in another case the workman was charge sheeted vide memo dated 15.9.1998 for his failure to maintain absolute integrity and devotion to duty; and penalty of stoppage of one increment without cumulative effect from the year 1999 and recovery of Rs.5000/- in two equal monthly instalments was imposed. In such circumstances the workman is not entitled for grant of selection grade as well as promotion of TA II due to his involvement in Vigilance cases. Thereafter in pursuance of Zonal Manager's order dated 29.12.2000 and corrigendum order dated 24.9.2001 the workman was promoted as TA-II against the panel year 2000 with immediate effect subject to his joining. The management has explained that on the vacation of Stay order of Hon'ble Supreme Court on 10.6.1991 since the workman was earlier charge sheeted and subsequent penalty was imposed, the question of his promotion as per his claim did not arise and there had been no illegality on the part of the management. Since the promotion order to the post of TA II has been released later on, the claim of the petitioner is not tenable in the eyes of law and the workman is not entitled to any relief. The opposite party has prayed to dismiss the claim statement along with cost.
8. Certain enclosures have been annexed along with written statement.
9. The petitioner has filed certain documents as per list C-31. The petitioner has moved the amendment application A-26. Additional written statement has been filed on behalf of the opposite party as A-37. The workman has filed affidavit W-43 as evidence. He was thoroughly cross examined on behalf of the management. The management has filed affidavit M-47 of Miss R.Dewan, she was cross examined on behalf of the workman.
10. Arguments in writing of both the parties have been filed in the court.

11. Several adjournment were given by both the parties. Arguments for the workman were heard at length, none appeared on behalf of the opposite party to submit oral arguments. However written arguments have been filed earlier.
12. Learned AR for the workman has relied upon the following rulings;
 1. 1999 (5), SCC, Bank of India Vs Devgale Suryanaran page 762.
 2. AIR 1990 Supreme Court State of MP Bani Singh page 1308
 3. AIR SC 1964 Govt. of India H.C. Goel page 364
13. Learned AR for the management has submitted that the aforesaid pronouncements do not apply to the facts of the present case.
14. Learned AR for the workman has emphasized that the workman was unduly harassed, he was deprived of his genuine promotion w.e.f. 10.06.1991 to the post of TA-II, from TA-III. The management while refuting this submission has pointed out that earlier in pursuance of the order passed by Hon'ble Supreme Court promotion order was not materialized in favour of the workman, later on an enquiry was contemplated by Vigilance Department against him, and he was found guilty even then lenient view was taken and penalty of stoppage of one increment without cumulative effect was imposed. Further in another case a charge sheet was issued against the workman for his failure to maintain absolute integrity and devotion of duty, for which penalty of stoppage of one increment without cumulative effect and recovery of Rs.5000/ in two equal monthly instalments was imposed. Learned AR for the workman has submitted that the so called workman Vigilance/Departmental enquiries were not conducted in a fair manner and the employee was not provided sufficient opportunity to defend himself. Opposite party has objected to it.
15. The management has further submitted that in pursuant of zonal office letter dated 29.12.2000 and corrigendum letter dated 24.09.2001, workman has been promoted as TA-II from the post of TA-III against the panel year 2000 with immediate effect subject to his joining.
16. The workman Sri Shital Prasad has stated in his cross examination at page 2 that he does not remember whether any departmental appeal has been preferred by him or not.
17. Miss Rita Dewan, management witness in her affidavit M-47, para 12 has specifically asserted that the workman has been given promotion in pursuance of the aforesaid letters dated 29.12.2000 and 24.09.2001 against the penal year 2000. However, it is pertinent to mention here that learned AR for the workman has not cross examined the management witness on this assertion relating to his promotion order to the post of TA-II.
18. It is admitted fact that the earlier promotion of workman was withheld in view of the order passed by Hon'ble Supreme Court. The main bone of contention lies here that the workman asserts that his promotion ought to have been released in view of later orders passed by Hon'ble Supreme Court on 10.06.1991 but the management takes strong exception to it and stresses that prior to release of the promotion order, fresh vigilance case was contemplated and the workman was found guilty.
19. It is also evident from the perusal of the record that the workman was granted promotion in pursuance of zonal office letter dated 29.12.2000 and another letter dated 24.09.2001. The workman has apparently been punished as a result of vigilance enquiry/departmental enquiry for which it has not been shown to this court whether any appeal or representation was made and effectively pressed by the workman or not. Therefore, non granting of promotion to the workman from the post of TA-III to TA-II w.e.f. 10.6.1991 by the management can not be treated as illegal or unjustified. Similarly the matter of non grant of selection grade to workman w.e.f. 1.12.1989 is also not found illegal and unjustified. Hence the workman is not entitled to any relief.
20. Award as above.

LUCKNOW
23.02.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2017

का.आ. 874.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 52/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.03.2017 को प्राप्त हुआ था।

[सं. एल-22011/47/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 3rd April, 2017

S.O. 874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 07.03.2017.

[No. L-22011/47/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 52/2008

Ref. No. L-22011/47/2008-IR(C-II) dated 24.10.2008

BETWEEN

The State Secretary
Bharatiya Khadya Nigam Karamchari Sangh,
TC/3V, Vibhuti Khand
Gomti Nagar, Lucknow

AND

1. The Executive Director(North),
Food Corporation of India
Plot No. 2A,2B, Sector 24,Gautam Budh Nagar
Noida (U.P.)
2. The General Manager (UP)
Food Corporation of India
TC/3V, Vibhuti Khand, Gomti Nagar
Lucknow

AWARD

1 By order No. L-22011/47/2008-IR(CM-II) dated 24.10.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between State Secretary, Bhartiya Khadya Nigam Karamchari Sangh, Lucknow (espousing cause of Sri Inder Pal) and the General Manage(UP)Executive Director (North) Lucknow/Noida for adjudication. Corrigendum dated 12.04.2010 was also issued.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT FCI IN IMPOSING PENALTY FOR RECOVERY @ Rs.19582/- FROM SHRI INDER PAL VIDE LETTER DATED 08.03.2006 IS LEGAL AND JUSTIFIED? TO WHAT RELIEF IS THE WORKMAN CONCERNED ENTITLED?”

3. As per the claim statement the employees union has stated in brief that the workman Sri Inder Pal was suspended vide order dated 05.03.2002 by opposite party no.2 without any justification and reason, suspension was revoked by another order dated 28.10.2002, charge sheet was issued on 05.09.2005 under Regulation 60 of Staff Regulation 1971, under minor penalty. The union has asserted that the suspension revocation order and charge sheet were issued from the same file number which shows that the employee was suspended for the cause, for which charge sheet has been given, there was no reason to suspend him it is wholly unjustified, and illegal order which was passed, it was categorically replied dated 23.09.2005, but it was not considered duly, and penalty of Rs.19582/- was imposed without any jurisdiction by impugned order dated 08.03.2006.

4. The union has stressed that the reliance was placed by opposite party no.2 on such documents which have been referred in the charge sheet, the workman was transferred under disciplinary control of opposite party no.1 but the impugned order was passed by opposite party no.2 without any jurisdiction. The department did not take any decision about period of suspension, the workman has claimed entitled for arrear of salary of suspension period. The petitioner has emphasized that it was not duly considered that the employee was custodian of plinth no.4, DESHNOKE CAP-II, custodian was responsible for custody of stock only he was satisfied with the weightment of stock, the question of 10%

test check weighment does not arise. It should have been taken into account that the rack in question was weighed at Dharamkanta in the presence of AM(ICO), AM(QC), Railhead incharge, and other authorities, in such conditions the workman could not be held responsible for fault in the weighbridge.

5. The union has further stated that there was no provision for test check weighment at the Depot, nor there was any beam scale, the workman was not responsible for transit loss in anyway. The appeal dated 26.04.2006 filed by the employee was not considered in accordance with law and was rejected on 14.2.2007, opportunity of hearing was not provided, nor any reasoned order was passed, the appellate authority has added new charges in the appellate order which is not permissible under law. With the aforesaid pleadings relief has been sought for the payment of dues over and above suspension allowance w.e.f. 05.03.2002 to 28.10.2002, and to set aside the penalty order dated 08.03.2006 and appellate order dated 14.02.2007. As per list W-5 several documents have been filed by the union.

6. The management while denying the allegations leveled in the claim statement had filed written statement M-7. The management has submitted that due to grave misconduct, departmental proceedings were initiated and workman was suspended due to negligence and carelessness in the shape of transit loss in Wheat as custodian and incharge of plinth no.4 at CAP, Deshnoke in Jan.2002, employee did not maintain absolute integrity and devotion to duty, charge sheet was issued in legal manner and it was passed on documentary evidences. The opposite party has stated that after due consideration a lenient view was taken and a charge sheet under minor penalty has been issued on 05.09.2005. The departmental proceedings were contemplated for grave misconduct. No illegality was committed in passing the suspension order. Opportunity was provided to the workmen to submit his representation against the charges leveled, the reply submitted was not found satisfactory. Record regarding stock etc. was not maintained properly and effective steps were not taken which caused loss to the Corporation, transit loss to the tune Rs1,77,027.00 was occurred due to negligence and carelessness on the part of the workman, penalty order was issued by the competent authority as per the Rules and Regulations. Suspension period has also been regularized vide order dated 10.12.2007. There was joint responsibility of unit incharge and Manager Depot for correct weighment but initially the weight was shown less with malafide intension. Appeal filed by the employee against the punishment order was also decided as per law and reasoned and speaking order was also passed.

7. The opposite party has stressed that the employee could avail alternate remedy to file review under Staff Regulations 1971; the employee has approached this Tribunal without jurisdiction. All the orders passed by the Disciplinary Authority and Appellate authority were lawful, just, legal and valid. The management has requested to dismiss the claim statement with heavy cost.

8. With the denial of the main facts of the written statement, while reiterating the pleas taken the claim statement, rejoinder W-8 has been filed.

9. The management has filed certain documents as per list M-10.

10. The affidavit of Inder Pal was submitted by the petitioner.

11. The management has filed affidavit of Sri Rameshwar Lal Ahir M-12. Both the witness was cross examined by the rival parties.

12. Both the parties have preferred to file written arguments in support of the stand taken by them. Several dates were fixed for hearing the oral arguments as well. But despite being given sufficient opportunity, none appeared in the court on behalf of the workman. Notice through registered post was also issued in the interest of justice. Consequently, arguments of Learned AR for the workman were heard at length, Record available before the court has been scanned thoroughly.

13. Learned AR for the workman in his written arguments, has relied upon following rulings;

1. 199 SCC (L&S), Kuldeep Singh Vs Police Commissioner page 429.
2. AIR 1978 SC Mahindra Vs State of UP page 851.
3. (2009) SCC Roop Singh Negi Vs Punjab National Bank page 398

14. Learned AR for the opposite party has submitted that the aforesaid rulings do not apply to the fact of the present case.

15. The workman union has claimed the entitlement of arrear of the full salary of the suspension period, it has emphasized that there was no provision of test check weighment at Depot but this fact was ignored by the management. Technical issue has also been raised that workman was transferred under disciplinary control of OP No.1 while the impugned order was passed by OP No.2. Staff Regulations was not followed by the management there was no reasonable and justified factor to suspend the workman. The management has categorically denied the allegations leveled by the workman and has mentioned that the reply submitted by the workman was unsatisfactory, record regarding stock was not duly maintained. Steps were not taken to curb the loss, transit loss was occurred due to gross

negligence and carelessness on the part of the workman and therefore penalty order was issued by the departmental enquiry as per rules and regulations, moreover suspension period was also regularized by another order dated 10.05.2007. Initially the weight was shown with malafide intention. Alternate remedy of filing of review was not availed by the employee.

16. The workman Sri Indra Pal in his cross examination dated 10.11.2009 has admitted that he had received stock and was placed probably at plinth no.4, stock was handed over after being weighed at Pappu Dharamkata at rail head and he could know regarding 3.74 transit loss after 3 days, and thereafter Manager sent the information to Haryana Office and District office as well. Thereafter in the presence of 3 members committee the stock was weighed again, it was found not upto the mark. In page 2 of the cross examination the workman has admitted that during process of verification, stock was weighed again and loss was reduced to the level of 89%. This admission in cross examination was not further elaborated and it reflects certain ulterior motive or direct/implied negligence on the part of the workman.

17. Sri Rameshwar Lal Ahir the management witness/Manager Vigilance has been examined by the opposite party. In his cross examination he has asserted that the nature of transit loss in this particular case was not of general nature.

18. It is evident from the perusal of the record that the principle of legitimate expectation of nominal loss in the weight of the stock due to weather condition, was taken into account by the management-officer while dealing with the departmental enquiry of the workman.

19. It is reflected from letter dated 8.03.2016, paper no.W-5/19-5/21 that the department had imposed “a penalty of recovery of Rs.19,582/ in 10 equal instalments and Censure upon Sri Indra Pal AG-I(D)”. Keeping in view the alleged negligence and carelessness of the employees, the punishment awarded can not be treated as disproportionate to the loss caused to FCI.

20. After giving thoughtful consideration to the rival contention of both the parties in the light of the record available before the Court it can not be inferred that the penalty order dated 8.3.2006 and appellate order dated 14.02.2007 passed by the management was unjustified and improper. The workman has failed to prove the rationality and legality for payment of the sum claimed over and above suspension allowance, as pleaded in the claim statement. In such circumstances the impugned order dated 8.3.2006 imposing penalty for recovery of Rs.19,582/- from the workman Sri Indra Pal, can not be treated illegal and unjustified. Therefore the workman is not entitled for any relief.

21. Award as above.

LUCKNOW
20.02.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 875.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्व रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 98/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/103/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Purvottar Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41012/103/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 98/2011**

Ref. No. L-41012/103/2010-IR (B-I) dated 19.05.2011

BETWEEN :

Sri Triveni Singh, By Parvej Alam
H.No.283/63 Kh, Gadi Kannora(Premwati Nagar),
P.O. Manak Nagar
Lucknow

AND

1. Sr.Electrical Engineer,
Purvottar Railway, DRM Office,
Ashok Marg,
Lucknow
2. Varisth Mandal Karmik Adhikari,
Purvottar Railway, DRM Office,
Ashok Marg,
Lucknow

AWARD

1. By Order No. L-41012/103/2010-IR(B-I) dated 19.05.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Triveni Singh By Parvej Alam, Lucknow and the Sr.Electrical Engineer/Varisth Mandal Karmik Adhikar,Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF DIVISIONAL RAILWAY MANAGER, NORTH EASTERN RAILWAY, LUCKNOW IN REVERTING SRI TRIVENI SINGH TO THE POST OF KHALASI IN THE PAY SCALE OF Rs.2550-3200/- (pre revised) ON HIS TRANSFER FROM WEST CENTRAL RAILWAY, KOTA WHERE HE WAS HOLDING SUBSTANTIVE POST OF HELPER-II IN THE PAY SCALE OF Rs.2650-4000 (pre revised) AND WORKING AS LINEMAN ON AD-HOC BASIS IN THE PAY SCALE OF Rs.3050-4590 (PRE-REVISED) VIDE THEIR ORDER DATED 13/6/2002, IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

3. As per the claim statement W-3, the workman has stated in brief that he was appointed in Western Railway, under Sr.Divisional Engineer(Electrical), and at present he is working as Helper-II under the subordination of Section Engineer, TRD, NER, Aishbagh, Lucknow. The applicant has stated that he was promoted to the pay scale of Rs.2650-4000 (present pay scale Rs.6580-9090) vide Sr.Electrical Engineer's letter dated 16.02.1994, as per the requirement he was appointed as adhoc Lineman in the pay scale of Rs.3050-4590 in pursuance of letter dated 02.05.2002, he was later on transferred to the post of Khalasi in the pay scale of Rs.2550-3200 under Section Engineer, TRD, NER, Aishbagh, Lucknow vide order dated 13.08.2002.

4. The workman has further stated that demotion to the pay scale Rs.2550-3200 from Rs.2650-4000 is an unfair labour practice, violative of the legal provisions of I.D. Act., and Railway Rules. The applicant has also submitted that he had moved applications dated 29.04.2004, 20.09.2004, 24.09.2004, 12.12.2006 and 19.12.2007 to the concerned authorities, which are still pending. With the aforesaid pleadings, the workman has requested for sanction of pay scale Rs.2650-4000 instead of Rs.2550-3200 as Helper Grade-II w.e.f. 13.08.2002, alongwith all consequential benefits etc.

5. With the denial of the allegations leveled in the claim statement, Written statement M-9 has been filed by the management wherein it is admitted that the workman is presently posted as Khalasi-II in the pay scale of Rs.2550-3200,(Rs.5200-20200), Grade pay Rs.1800/- under Section Engineer, TRD, LJN. The management has emphasized that the workman was posted as adhoc Lineman-III (Rs.3050-4590) under Dy.Chief Electrical Engineer, OHE,RE, Lucknow, he was repatriated to his parent Railway, under DRM, Western Railway, Kota for absorption to the post of Sr.Khalasi (Rs.2550-4000) vide office order dated 23.01.2001 issued by Chief Electrical Engineer, Railway Electrification, Lucknow.

6. The opposite party further stated that in compliance of office order dated 23.01.2001, the workman was spared from RE/Lucknow to Divl., Rly. Manager, Western Railway, Quota vide office order dated 11.06.2001. The workman was, however, returned by DRM, Western Railway, Kota as there was no vacancy at Kota, hence he was again posted as adhoc Lineman-III (Gr.3050-4590) under Divl. Electrical Engineer/RE, Lucknow. Subsequently the workman was on his own request transferred from RE/Lucknow to Sr.Divl. Ele. Engineer, NER, Lucknow absolutely on temporary arrangement, vide office order dated 08.07.2001 issued by Project Manager, R.E. Lucknow. It may be noted that the workman was posted under RE/Lucknow on deputation as adhoc Lineman-III (Gr.Rs.3030-4590) but after his transfer on his own request from RE to NER, Lucknow, he was posted under Sr.D.E.E., NER, Lucknow as Khalasi in Gr. Rs.2550-3200) vide office order dated 08.07.2001. The opposite party management has asserted that the workman was transferred and posted from RE, Lucknow to NER, Lucknow Jn. Under Sec. Engineer, TRD, NER, Lucknow Jn., on his basic post of Khalasi (2550-3200). He was spared from RE, Lucknow to join on the post of Khalasi (Rs.2550-3200) vide office order dated 28.10.2002 issued by Dy.Chief Electrical Engineer, RE, Lucknow. The opposite party management has submitted that the workman has been transferred from RE, Lucknow to NER, Lucknow on his own request to his basic post of Khalasi (Rs.2550-3200) vide office order dated 08.07.2001 and 28.10.2002. It may be mentioned that the parent Railway of the workman is Western Railway, Kota where he was posted as Khalasi (750-940/2550-3200). He was, however, posted as adhoc Lineman (Rs.3050-4590) under Dy.Chief Electrical Engineer, OHE, RE, Lucknow. Hence, when on his own request he was transferred and posted under NER from RE, Lucknow, he was posted to his substantive post of Khalasi in Gr.Rs.2550-3200. It is submitted that a person holding a higher post purely on temporary or on adhoc basis acquires no right to hold the post.
7. The opposite party has submitted that none of so called representations made by the applicant, are available in the record, same have been mentioned for the purposes of raising dispute only. The workman has since been transferred from RE, Lucknow to NER, Lucknow on his own request, he has been correctly allowed the pay scale Rs.2550-3200 to the post of Khalasi and he is not entitled to the post of Helper Gr.-II in the pay scale of Rs.2650-4000. The opposite party has also stressed that the workman because of being successful in the Trade Test held under ACP Scheme vide notification dated 09.11.2005, he has been given the benefit of next scale from Rs.2550-3200 to 2650-4000, vide office order dated 13.12.2005. The management has submitted that no Industrial Dispute exists between the workman and employer. Several annexures has been enclosed by the opposite party alongwith written statement. The opposite party has requested to dismiss the claim statement alongwith cost.
8. With strong denial of the main facts mentioned by the opposite party in its written statement, while reiterating the pleas taken in the claim statement, the workman has filed rejoinder W-10 alongwith affidavit W-11 and certain annexures.
9. The management has filed the documents with list M13-I.
10. The workman has filed the affidavit in evidence. He was thoroughly cross examined on behalf of the management.
11. The management has submitted affidavit of Sri Sanat Jain, APO-I as M-22; he was cross examined on behalf of the workman.
12. Arguments of learned ARs for both the parties have been heard at length, and record has been scanned thoroughly.
13. Main contention of the workman, against the management is reverting him to the post of Khalasi in lower pay scale on his transfer from West Central Railway where he was holding substantial post of Helper-2 and was working as Lineman on adhoc basis. Learned AR for the workman has alleged that impugned transfer order of reversion to the lower pay scale passed by the management is illegal and unjust. Learned AR for the management while refuting this submission asserts that the workman was transferred from Railway Electrification, Lucknow to NER, Lucknow on his own request, and it is also a material fact that the workman was posted as adhoc Lineman and he has been granted the pay scale of Rs.2550-3200 to the post of Khalasi since he is not entitled to the post of Helper 2.
14. The petitioner has referred to an office order dated 10.2.1994 whereby 60 employees, including the petitioner himself (at sl.no.36) has been promoted and posted after clearing the technical examination. Another order dated 13.6.2002 has also been mentioned by the petitioner. Other documents pertaining to matter in issue are quite relevant for the efficacious and just disposal of the dispute.
15. Office order dated 8.7.2002 issued by the Project Manager(Rural Electrification), paper no.9/12 provides that the employees mentioned in that order have on their own request, been transferred on purely temporary basis. The petitioner has cleared the technical examination, as is evident from notification dated 9.11.2005 issued by DRM office, and consequently vide order dated 13.12.2005 the petitioner has been granted the higher pay scale.

16. The workman in his cross examination dated 10.6.2015, has admitted before this Court, on page 2 that he was appointed under Kota Division in the pay scale of Rs.2550-3200, after clearing the examination he was promoted to the post of Sr.Helper in Nov.1993, and was later on posted as Lineman Gr.III on 30.8.99 under the subordination of Rural Electrification, Lucknow. Subsequently on page 3 the petitioner has admitted that he was repatriated vide office order dated 23.01.2001, and was relieved vide another order dated 11.06.2001, and since there was no vacancy under Kota Divn., he was transferred back. The workman in his cross examination on page 4 has asserted that the Rural Electrification, Office Lucknow has posted him on adhoc basis as Lineman Gr.3 in the pay scale of 3050-4590, vide order dated 25.9.2001.

17. Learned AR for the management has referred the following Ruling:

(1)(1997)9, SCC State of Punjab & others Vs. Krishna Niwas page 31.

18. Hon'ble Supreme Court in a matter pertaining to departmental enquiry has observed in para 4 of the judgment, since the respondent having accepted the order of the Appellate Authority and joined the post it was not open to him to challenge the order subsequently. Hon'ble Supreme Court has emphasized that by his conduct, the respondent has accepted the correctness of the order and then acted upon it.

19. Learned AR for the workman submits that the aforesaid Ruling does not apply to the matter in issue. Learned AR for the management strongly objects to this argument.

20. After having heard intellect arguments of both the Learned ARs, and having gone through the record as discussed hereinabove, it is quite evident that the workman was posted as adhoc Lineman and was repatriated to his parent department, moreover there was no vacancy at Kota and on his own request he was transferred from Railway Electrification Department, to Sr.Divn. Engineer, NER, Lucknow on temporary arrangement. It is also quite pertinent to mention here that after being successful in the Trade Test held under the ACP Scheme the workman has been given the benefit of next pay scale viz Rs.2650-4000. Under such circumstances, it is inferred after prudent and genuine analysis of the facts elaborately discussed hereinabove that the impugned order dated 13.06.2002 passed by the management is quite legal and justified. The workman is not entitled to any relief.

21. Award as above.

LUCKNOW
26.08..2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 876.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 21/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/88/2004-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 876.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41012/88/2004-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 21/2008

Ref. No. L-41012/88/2004-IR(B-I) dated 17.03.2008

BETWEEN :

Mandal Organization Secretary
 Uttar Railway Karmachari Union
 283/63KH(B) Garhi Kaunnara(Premwati Nagar)
 PO Manak Nagar, Lucknow-226001

AND

1. The Sr. DPO
 Northern Railway
 DRM, Karyalaya, Hazratganj
 Lucknow

AWARD

1. By Order No. L-41012/88/2004-IR(B-I) dated 17.03.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Organization Secretary, Uttar Railway Karmchhari Union, Lucknow and the Sr.DPO, Northern Railway, Lucknow for adjudication.

2. The reference under adjudication is:

“KYA PRABANDHAN UTTAR RAILWAY DWARA SRI RAMESH KUMAR S/O LATE SRI RAM KUMAR, DIESEL SAHAYAK KO VARSH 1983-84 KE PANEL ME SAMAYOJIT NA KARKE VARSH 1991-92 KE PANEL ME SAMAYOJIT KARNA UCHIT TATHA NYAYSANGAT HAI? YADI NAHIN TO KARMKAR KIS ANUTOSH KO PANE KA ADHIKARI HAI?”

3. The petitioner union in its claim statement A-4 has stated in brief that the workman Sri Ramesh Kumar was appointed as Cleaner on 3.1.77 in Loco Shed, Northern Railway and has worked for 1718 days upto 3.9.81 but he was illegally retrenched on 4.9.81, being aggrieved the workman had filed CASE NO. 48/1983 before CGIT, Kanpur which had been adjudicated in favour of the workman vide award dated 19.2.1987 and in that award the name of the workman lies at sl.no.145. The management has filed writ petition No. 12743/87 before Hon'ble High Court, Allahabad which has been dismissed on 5.2.1990; during pendency of the aforesaid ID the workman was reinstated on 4.8.83.

4. The petitioner has further asserted that after dismissal of the writ petition the opposite party management has issued a letter to implement the award dated 19.2.87. It has been stressed in the claim statement that during pendency of the cases, the opposite party has regularized him on the post of Loco Cleaner vide letter dated 30.8.91 while other junior workmen have been regularized on the basis of 120 working days, w.e.f. 30.9.81 and they have been adjusted in the panel pertaining to year 1983-84, which is clear violation of Railway Rules and patently it is unfair labour practice. Similar example of Sri Amarjeet Singh and Sri Abdul Aziz who were included in panel of the year 1992 and had been given relief of the orders passed by Hon'ble CAT in 466/91 and OA no. 510/93; were later on included in the panel of the year 1983-84.

5. The petitioner has further asserted that other employees Sri Pratap Bahadur and Sri Ahmed Ali who were included in the year 1992 panel were given benefit in compliance of the award adjudicated by CGIT, Lucknow in I.D. No. 28/4 and I.D. No. 12/05 and these two employees were included in the panel of 1983-84 With the aforesaid pleadings request has been made by the petitioner union to treat the workman included in the panel of year 1983-84 taking due regard of his seniority with all consequential benefits etc. Several documents have been annexed alongwith the claim statement.

6. The management has filed written statement dated 26.3.2009, alongwith application M-9. The management has admitted award dated 19.2.87 passed by CGIT, Kanpur. The opposite party has stated that in compliance of the award the workman was reengaged on the respective post, other averments of the claim statement have been denied.

7. The management has stressed that about 2000 persons including the workman had got their names entered on railway administration muster roll fraudulently and without due application and requirement of railway administration they got illegal wages when this fraud was brought to the notice of the railway administration the aforesaid 2000 persons including the workman were disengaged from their respective posts. The management has asserted that the status of the workman was only like temporary casual worker and he was reengaged on the post of Loco Cleaner as per availability of regular vacant post. The opposite party has pointed out that other persons mentioned in the claim statement have been absorbed in compliance of the orders passed by Hon'ble CAT and this Court, and moreover the workman was not party in any of the mentioned cases so he can not claim parity.

8. The management while referring the principle propounded by Hon'ble Supreme Court in 2007 (6) AWC, M. Ramkattia vs Union of India page 6656, has asserted quoting the referred paras of the Railway Establishment Manual that the claim statement is liable to be dismissed with heavy cost.

9. With strong denial of the allegations levelled in the written statement, the workman has filed rejoinder W-19, while reiterating the plea taken in the claim statement and has emphasized that the workman is not a casual labour the principle propounded by Hon'ble Supreme Court is not applicable to the matter in issue. The petitioner has also submitted that the workman is not concerned with the so called fraudulent appointments, and written statement ought to have been signed by Sr.DPO. Several documents alongwith rejoinder have been filed.

10. The workman has filed affidavit W-11 in its evidence.

11. The management has filed affidavit M-18 of Sri Prashant Rai, SR.DPO alongwith annexures. He has been cross examined by learned AR for the workman.

12. Arguments of both the parties have been heard thoroughly and record has been perused.

13. Learned AR for the petitioner has submitted that in different matters pertaining to other employees, award has been adjudicated against the management/Northern Railway by the CGIT, Kanpur in I.D. No.48/83 and CGIT, Lucknow in I.D. No. 28/04 and 12/05 and CAT Lucknow in O.A No. 466/91 and 510/93, and in compliance of these judgments relief has been provided to the concerned employees. Even then the petitioner workman is discriminated and has not been provided salary and consequential benefits due to him as per Rules, neither he has been included in the panel of the year 83-84. Learned AR for the management strongly refuting this submission, asserts that parity can not be claimed with other employees, who have been treated deliberately in accordance with Rules and in obedience of the direction given by the Hon'ble CGIT and Hon'ble CAT.

14. It may be quite pertinent to mention here that on 11.11.2010, learned AR for the workman made an endorsement on the order-sheet before the then Hon'ble judge of this Tribunal that the union has produced all documents and affidavit, therefore no further evidence would be produced. Thereafter date was fixed for evidence of the opposite party. However, Learned AR for the management neither cross examined the workman, nor made any request to this court for his cross examination.

15. Mr. Prashant Rai, DPO, produced by the management in evidence, has admitted in cross examination dated 26.08.2015 that documents 4/24,4/25,4/26 and 4/27 have been issued in compliance of the orders of the Court. It is evident from the record available, that the name of Sri Pratap Bahadur S/o late Sri Moti Lal, has been interpolated in the panel No. 220E/1-5/Screening/82-83 dated 6.8.84, at sl.no.8(a), in compliance of the award dated 9/10.10.2006 adjudicated by CGIT, Lucknow in I.D. No. 28.2004. His seniority has also been revised for grant of other consequential benefits at par with his junior Mr. Radhey Shyam. It has been pointed out by the learned AR of the management that this arrangement was provisional and subject to the decision of the Hon'ble High Court in writ petition no. 1668/07(S/B), Union of India vs Pratap Bahadur and others.

16. Similarly it is also quite pertinent to mention that another employee Sri Amarjeet Singh S/o Sardar Daleep Singh, has been interpolated in the panel of year 82-83 in compliance of the judgment dated 28.4.93 delivered in O.A.No. 466/91. Another employee Abdul Aziz was interpolated in the panel of the year 82-83 in obedience of order passed by CAT, Lucknow in O.A. NO. 510/93 which was later on confirmed by Hon'ble High Court.

17. Those employees who have approached the CGIT/CAT, their genuine request was accepted by the Hon'ble Tribunal and their grievances were redressed by the NR/opposite party.

18. Learned AR for the management has referred the following pronouncement;

2000 (6)AWC, M.Rakutahia vs Union of India page 1556 Hon'ble Supreme Court.

19. Learned AR for the workman submits that the above Ruling does not apply to the dispute in question.

20. Generally junior employees, ignoring seniors, should not be given promotion and other pecuniary benefits by ignoring the seniors, unless and until there is some valid and legally feasible reason. The amended para 2511, Indian Railway Establishment Manual, Rules reads as under;

“Casual labour treated as temporary are entitled to all the rights and benefits admissible to temporary Railway Servants as laid down in Chapter-XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of Disciplinary & Appeal Rules. However, their service prior to absorption in temporary/permanent regular cadre after the required selection/screening will not come for purposes of seniority and the date of their regular appointment after screening/selection determine their seniority vis-à-vis other regular employees. This is, however, subject to previous that if the seniority of certain individual employees has already

been determined in any other manner either in pursuance of judicial decision or otherwise the seniority so determined shall be altered. Casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days continuous employment and before regular absorption as qualifying service for the purposes of pensionary benefits. Such casual labour, who have attained temporary status will also be allowed to carry forward the leave at their credit to the new post on absorption in regular service. Daily rates casual labour or labour employed on project will not be entitled to these benefits.”

21. The provisions of the Manual have got, no doubt, relevant importance; however, disparity and discrimination, while considering employees for absorption in temporary/permanent cadre can not be justified without any appropriate valid reason. It is admitted case of the management as well that certain employees have been granted benefit of absorption in the relevant year, under the direction of this Tribunal and CAT.

22. Another crucial point has been raised by the opposite party that many persons including the workman had got their names entered on Railway Administration Muster Roll fraudulently and they had even received illegal wages. Learned AR for the workman has strongly refuted this submission. No cogent evidence has been provided by the management regarding so called fraudulent activities of the Railway employees including workman.

23. It may be pertinent to refer here the order dated 11.01.2010, wherein, Learned AR for the workman has endorsed, “the union has produced all the documentary evidence and affidavit, no further evidence to be adduced”, thereafter opportunity was provided to management for filing its evidence. The opposite party management did not make any endeavour, neither moved any application seeking permission to cross-examine the petitioner witness.

24. After having heard intellect arguments of both the learned ARs at length and comprehensive analysis of the evidence available on record, it is inferred that non absorption of the workman in the year 1983-84 and treating him in the panel of 1991-92, can not be considered as a valid and legal act. The management has not provided any reasonable and genuine explanation for this discrimination. Senior employee should not generally be ignored while granting departmental benefits to the junior employees, without any valid and cogent reason. Therefore, the petitioner is entitled to the relief claimed. The management is directed to treat the workman Sri Ramesh Kumar as absorbed in the panel of 1983-84, instead of the year 1991-92. The workman is entitled to receive all the pecuniary gains and promotional avenues alongwith consequential benefits as per Rules. The opposite party is hereby directed to ensure the payment of all the dues accordingly, to the workman within 10 weeks after the date of notification of the award, failing which the management shall also be liable to pay interest @ 6% per annum.

25. Award as above.

LUCKNOW

29th September, 2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 877.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 43/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/66/2007-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 877.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41012/66/2007-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 43/2007**

Ref. No. L-41012/66/2007-IR(C-II) dated 06.09.2007

BETWEEN :

Mandal Sanghatan Mantri
Uttar Railway Karmachari Union
283/63KH(B) Garhi Kaunnara (Premwati Nagar)
PO Manak Nagar, Lucknow-16

AND

1. The Sr. DPO
Northern Railway
DRM, Karyalaya, Hazratganj
Lucknow

AWARD

1. By order No. L-41012/66/2007-IR(B-I) dated 06.09.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sanghatan Mantri, Uttar Railway Karmchhari Union, Lucknow and the Sr.DPO, Northern Railway, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF SENIOR DIVISIONAL PERSONNEL OFFICER, NORTHERN RAILWAY, LUCKNOW IN NOT GIVING PROMOTION TO SRI DEVI PRASAD (T. No. 716), MACHINE SHOP HELPER KHALASI (ASSISTANT TURNER) TO TURNER GRADE-III IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED?”

3. As per the claim statement A-4 the petitioner union has stated in brief that the workman Sri Devi Prasad was appointed on 6.8.80 on the post of Machine Shop Khalasi, he was promoted vide letter dated 11.12.1992 to the post of Khalasi Helper. The petitioner has further stated that four posts of Turner Grade-III are lying vacant since 1992; as per the seniority list workman ought to have been promoted to the post of Turner Gr-III, but another employee Sri Baijnath junior to the workman and who had been transferred on his own request, has been granted promotion to the post of Turner Gr-III on 15.4.2003 which is against the prevalent Railway Rules, and it is clear unfair labour practice on the part of the management. With the aforesaid pleadings request has been made by the petitioner Union to grant promotion to the workman w.e.f. 15.4.2003, treating him senior to other employees, with all consequential benefits and arrears. Several documents have been annexed along with the claim statement.

4. The opposite party/management has filed “Short Counter Reply/Written Statement” dated 27.3.2009” along with an application M-7 signed by the counsel for the management. The opposite party has stated that the main contention of claim statement is misconceived and incorrect. However, the management has admitted that promotion has been given to Sri Baijnath as per his seniority and no provision of Railway Rule and I.D. Act., has been violated, promotion has been granted in accordance with law. The opposite party has further stressed that the representation of the workman is pending before the competent authority and the facts mentioned in the representation and pleadings of the claim statement are quite different. The opposite party has stated that the workman has mentioned in claim statement that Sri Baijnath has joined at Lucknow on the request ground and on the other hand, he himself has written that he has joined at Lucknow after the transfer from Mughal Sarai Division.

5. The management has emphasized that the claimant has not impleaded Sri Baijnath as necessary party, who is the man affected person and the claim of workman should be dismissed on the ground of non-joinder of necessary party. Request has been made to dismiss the claim statement with heavy cost.

6. With strong denial of the allegations leveled in the short counter reply/written statement, reiterated in the claim statement. Rejoinder W-8 has been filed by the petitioner union. The petitioner has specifically pointed out in the rejoinder that the ID Act, is between workman/union and the employer therefore there is no necessity to implead Sri Baijnath in this case. The petitioner has further stressed that the written statement has not been signed by the Sr.DPO neither it has been produce by him therefore it is liable to be rejected.

7. The workman has filed affidavit W-10 in support of the claim statement. He has been thoroughly cross examined by Learned AR of the opposite party.
8. The management has filed affidavit M-19 of Sri R.S.Kaushik, DPO along with annexures. Later on affidavit of M-22 of Sri Prashant Rai, Sr.DPO has been filed by the management along with annexures. He has been cross-examined by Learned AR of the workman.
9. Arguments of Learned ARs of both the parties have been heard at length. Record has been scanned thoroughly.
10. Learned AR for the workman has alleged that other employees junior to the workman Sri Devi Prasad have been granted promotion against the relevant Rules while the petitioner has not been promoted to the post of Turner Grade-III, although four posts are lying vacant since 1992. Learned AR for the management while refuting this argument has submitted that the case of other employee viz. Sri Baijnath is quite different; parity can not be given to the workman.
11. In support of the claim statement and rejoinder, affidavit of the workman Sri Devi Prasad has been filed in the court, in his cross-examination he has reiterated that the present case has been filed for promotion to the post of Turner Grade-III, and he has specifically asserted that Sri Baijnath junior to the workman has been promoted although his representations are pending before the management. Fact mentioned in the representation of the workman has been queried by the learned AR for the management.
12. No written statement or reply, duly signed by the Competent Authority of Northern Railway has been filed in this case. It is quite pertinent to mention here that copy of the rejoinder W-8 dated 24.4.2009 has been received by learned AR for the management and the petitioner in para 6 of the rejoinder has specifically pleaded that written statement, not duly signed by the DPO is liable to be rejected. Even then the management did not take it seriously and genuine legal consequences have apparently been ignored by the management.
13. The opposite party, has earlier filed affidavit of Sri R.S. Kaushik the then DPO but since he was not available for cross-examination another affidavit of Sri P.Rai, DPO has been filed as M-19 along with annexures. Mr. P.Rai, DPO has asserted in the cross-examination that the workman has been granted promotion, as per the documents annexed with the affidavit. However, he has admitted that seniority of Turner has not been filed in the court, and employees being transferred on request are kept at bottom although the present case is different.
14. The management in its "Short Counter Reply/Written Statement", signed by learned counsel for the management, has admitted in para 5 that the representation of the workman is pending before the competent authority. The management witness has nowhere elaborated in the affidavit that representation of the workman has been duly dealt with by the competent authority. Copies of letter dated 8.9.11 addressed to Chief Legal Assistant, and another promotion order dated 11.5.2010 and letter dated 27.4.2010 addressed to SDME have been filed by opposite party but inter-se comparison of the seniority of workman Sri Devi Prasad and other referred employee has not been duly explained by the management before this court, although photo copies of the representation dated 9.8.2005 and 29.8.2003 have been filed by the petitioner along with his claim statement.
15. After having heard the intellect and prudent arguments of both the learned ARs at length and thorough analysis of the dispute in the light of the evidence and documents available on record, it is inferred that the impugned action of the management in not given promotion to the workman Sri Devi Prasad to Turner Grade-III, as alleged, is neither legal nor justified. The management is directed to grant promotion to the workman from the due date, taking into account promotional/pecuniary benefits given to the other junior employee. The workman Sri Devi Prasad is entitled to consequential promotional and pecuniary benefits accordingly. The opposite party management is hereby directed to ensure entire payment of all the dues, as per Rules, to the workman, within 10 weeks after notification of the award failing which the management shall be liable to pay interest @ 6% per annum to the workman.
16. Award as above.

LUCKNOW

20th September, 2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 878.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 62/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/31/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 878.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41012/31/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 62/2015

Ref. No. L-41012/31/2015-IR(B-I) dated 28.09.2015

BETWEEN :

Sri Ravi Shankar S/o Sri Ram Khilavan
R/o Hari Kunwar Kheda Nigohan
Lucknow(UP)

AND

1. The Divisional Railway Manager,
Northern Railway
DRM Office, Hazratganj,
Lucknow
2. M/s. Shahid Faizan Ahmed & Brothers
654, Begum Ka Makbara
Janpad, Faizabad

AWARD

1. By order No. L-41012/31/2015-IR(B-I) dated 28.09.2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Ravi Shankar S/o Sri Ram Khilavan and the DRM, Northern Railway, Lucknow & others for adjudication.

2. The reference under adjudication is:

“KYA MESSERS SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD VA PRABDHAN, UTTAR RAILWAY, LUCKNOW DWARA SRI RAVI KUMAR S/O SRI RAM KHILAVAN KO DINAK 05.11.2010 KO NAUKARI SE NIKALA JANA NAYAOCHIT EVAN VAIDH HAI? YADI NAHIN TO VADI KIS RAHAT KO PANNE KA HAQDAR HAI?”

3. On receiving the reference order from the Ministry, notices through registered post were issued to both the parties, with direction to the workman to file claim statement with list of reliance and witness as well. On the next date 17.12.2015, an authority M-3 was filed on behalf of DRM, Northern Railway, Lucknow, subsequently dates were fixed for filing claim statement by the workman but none appeared although another notice through registered post was also issued to the workman.

4. Learned AR for the opposite party No.2, DRM, Northern Railway, Lucknow Sri U.K. Bajpai while vehemently opposing the reference has submitted that the so called workman is not entitled to any relief.

5. Heard the learned AR for opposite party No.2 and perused the record. Several dates have been fixed in this case, notices were issued to both the parties. Neither the workman nor his AR appeared in the court. No claim statement or any other petition has been filed by the so called workman. It appears that the workman might not interested to pursue the case. The reference under adjudication is answered as **NO CLAIM AWARD**.

6. Award accordingly.

25.11.2016
LUCKNOW

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 65/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/34/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41012/34/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 65/2015**

Ref. No. L-41012/34/2015-IR(B-I) dated 28/30.09.2015

BETWEEN :

Sri Ankur Singh S/o Sri Rajeshwar
R/o Raukarna
Unnao (UP)

AND

1. The Divisional Railway Manager,
Northern Railway
DRM Office, Hazratganj,
Lucknow
2. M/s. Shahid Faizan Ahmed & Brothers
654, Begum Ka Makbara
Janpad, Faizabad

AWARD

1. By order No. L-41012/34/2015-IR(B-I) dated 28/30.09.2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Ankur Singh S/o Sri Rajeshwar and the DRM, Northern Railway, Lucknow & others for adjudication.

2. The reference under adjudication is:

“KYA MESSERS SHAHID FAIZAN AHMED & BROTHERS, FAIZABAD VA PRABDHAN, UTTAR RAILWAY, LUCKNOW DWARA SRI ANKUR SINGH S/O SRI RAJESHWAR KO DINAK 25.07.2010 KO NAUKARI SE NIKALA JANA NAYAOCHIT EVAN VAIDH HAI? YADI NAHIN TO VADI KIS RAHAT KO PANNE KA HAQDAR HAI?”

3. On receiving the reference order from the Ministry, notices through registered post were issued to both the parties, with direction to the workman to file claim statement with list of reliance and witness as well. On the next date 17.12.2015, an authority M-3 was filed on behalf of DRM, Northern Railway, Lucknow, subsequently dates were fixed for filing claim statement by the workman but none appeared although another notice through registered post was also issued to the workman.

4. Learned AR for the opposite party No.2, DRM, Northern Railway, Lucknow Sri U.K. Bajpai while vehemently opposing the reference has submitted that the so called workman is not entitled to any relief.
5. Heard the learned AR for opposite party no.2 and perused the record. Several dates have been fixed in this case, notices were issued to both the parties. Neither the workman nor his AR appeared in the court. No claim statement or any other petition has been filed by the so called workman. It appears that the workman might not interested to pursue the case.. The reference under adjudication is answered as **NO CLAIM AWARD**.
6. Award accordingly.

25.11.2016
LUCKNOW

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 880.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 69/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/80/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 880.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41011/80/2013-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 69/2013

Ref. No. L-41011/80/2013-IR(C-II) dated 18.10.2013

BETWEEN :

Sri Parvez Alam
Mandal Sangathan Mantri,
Uttar Railway Karmachari Union
PO: Manak Nagar, Lucknow

AND

Sr. Divisional Personnel Officer
North Eastern Railway
Ashok Marg,
Lucknow(U.P.)

Sr. Divisional Electrical Engineer,
North Eastern Railway
Ashok Marg,
Lucknow (U.P.)

AWARD

1. By order No. L-41011/80/2013-IR(B-I) dated 18.10.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the

Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Parvez Alam, Mandal Sangathan Mantri, Uttar Railway Karmachari Union, Lucknow and the Sr.DPO/Sr.DE Engineer, Lucknow for adjudication.

2. The reference under adjudication is:

“KYA PRABANDHAN PURVOTTAR RAILWAY DWARA MOHD. MUSTAFA KHALASI SE DINANK 01.01.2004 SE 2010 TAK DRIVER KA KARYA LENE PER JEEP CHALAK KE PAD NIYAMIT NA KARNA NYAYOCHIT EVAM VAIDH HAI? YADI NAHIN TO KAMGAR KIS RAHAT KO PANE KA HAQDAR HAI?”

3. As per the claim statement W-3, the workman has stated in brief that he was appointed as Electrical Khalasi, and has been working w.e.f. 01.01.2004 upto 2010. He was required to work as Jeep Driver under Assistant Engineer (Power) on Jeep no. USO-9939, MZV-9411, MZV-9411 and UP-32-BG-5064.

4. The workman has further stated that he had moved for his regularization and salary in pursuance of the circular dated 20.04.1985 issued by Railway Board, before RLC (C) in case no. 45/07/10, which caused annoyance to the management and he was refrained from driving the said jeep rather another junior workman was entrusted to perform the duties of Jeep Driver which was against the Railway Rules as well as violative of I.D. Act. Unfair labour practice was adopted by the opposite party.

5. The petitioner has stressed that T&P of Jeep No.UP 32 BG-5064 was taken back on 18.01.2011 from him. It is evident from letter dated 16.07.2013 issued by RLC (C) Lucknow in the light of the various pronouncements of Hon'ble High Court and Hon'ble Supreme Court, Circular issued by the Railway Board, employee working on higher post continuously for 18 months ought to have been regularized on that post in the relevant pay scale. With the aforesaid pleadings, the petitioner has prayed to provide him the salary of the Driver and all consequential benefits in the light of the Circular dated 20.04.1985 issued by Railway Board w.e.f. the expiry of the period of 18 months after 01.01.2004.

6. The management, with strong denial of the allegations levelled in the claim statement has filed written statement M-9, wherein it has been asserted that the petitioner is at present working as Khalasi Helper in the pay scale of Rs.5200-20200, Grade Pay 1800/-. The opposite party has stated that the petitioner had not worked as Jeep Driver since 1.1.2004. Vehicle no.UP 32 BG-5064 mentioned, was not in existence on 1.1.2004, the said vehicle has been with the Electricity Department since 29.05.2009, and the petitioner was never appointed/posted as Jeep Driver, and he has regularly been paid the salary of Khalasi, the post which is being held by him. The petitioner was never selected for the post of Driver which is a “Selection Post”, and any person only after having cleared the due selection process could be appointed as Driver. The management has emphasized that there is no justification to treat the petitioner as Jeep Driver or to pay him the salary of the Jeep Driver. It has been further asserted that the petitioner was required to perform the duty of Jeep Driver under special circumstances for which he was duly paid ‘over time allowance’ for the additional work. Several certificates issued pertaining to Jeep no. UP 32 BG-5064 have been enclosed with the written statement.

7. The opposite party has stressed that selection process for filling 5 posts of Jeep Driver was initiated in furtherance of the notification dated 7/8.3.2006 and 24/25.04.2006 issued by DRM(P),NER, Lucknow inviting applications from the willing and eligible employees, consequently 18 employees submitted their applications but the petitioner did not move for the same. Unless and until any such application moved by the petitioner was processed and the petitioner was selected, he would not have been appointed/promoted to the post of Driver. The management has alleged that the petitioner has not produced all the facts before this Tribunal, more over conciliation proceedings were adopted before the RLC (C), Lucknow which could not be materialized due to adamant attitude of the petitioner.

8. The opposite party has further stated that since duty of Jeep Driver has not been assigned to the petitioner, he should have himself deposited the T&P Box but he did not duly hand over the said box so direction was given to him accordingly. The management has stressed that circular dated 20.4.1985 issued by the Railway Board does not apply in this case, no benefit as such can be given to the petitioner. The opposite party has requested to dismiss the claim statement with cost. Several documents have been annexed alongwith written statement.

9. Affidavit W-10 of the petitioner alongwith enclosures was filed in evidence by the claimant. He has been thoroughly cross examined on behalf of the management. Application M-16 alongwith details regarding vehicles mentioned therein have been filed by the management.

10. Affidavit M-19 of Sri Sanat Jain, APO has been filed by the opposite party, he has been thoroughly cross examined by the workman.

11. Arguments of both the parties have been heard at length. Record has been scanned thoroughly.

12. The learned authorized representative of the workman has argued that the workman had been appointed under the management of railway as Electrical Khalasi and the management made him work continuously as Jeep Driver w.e.f. 01.01.2004 to 2010 and when moved a representation before the Regional Labour Commissioner (C), Lucknow for

regularization against the post of Jeep Driver as per circular dated 20.04.1985 of the Railway Board, the management stopped availing his duties as Jeep Driver, which against railway rules as well as is unfair labour practice.

13. In rebuttal, the learned authorized representative of the management has contended that the workman is working as Khalasi Helper and his duties had never been availed continuously as Jeep Driver; but had been made to work as Driver in special conditions only, for which he had been paid over time. He has further asserted that the post of Jeep Driver is selection post; hence the workman cannot be regularized against said post; moreover, the workman did not applied for selection against said post which application was called for selection on the said post from eligible candidates vide notification dated 07/08-03-2006 and 24/25-04-2006. It has also been argued that that the circular dated 20.04.85 is not applicable in the case of workman.

14. I have given my thoughtful consideration to the contentions of the learned authorized representatives of the parties and scanned the entire evidence available on record.

15. The workman has come up with the case that the management has put the workman to work continuously as Jeep Driver 01.01.2004 to 2010, therefore, he is entitled for regularization against said post in terms of Railway Board's circular dated 20.04.85.

16. Per contra, the case of the management is that the workman had never been put to work, continuously, as Jeep Driver; but rather his duties were availed as Jeep Driver, in exigencies only and for which he had adequately been paid with over time. It is also the case of the management that the post of Jeep Driver being selection post, it is not possible for it to regularize the workman against the post of Jeep Driver. Moreover, it has also been asserted by the opposite party in its pleading that the workman himself did not applied against the notifications dated 07/08-03-2006 and 24/25-04-2006, calling for application from eligible candidates for selection against said post.

17. The workman in his cross-examination has stated that he had been appointed as Khalasi on 10.04.2003; and he had been made to work as Jeep Driver, through oral orders, without issuing any appointment letter. He also stated that while working as Jeep Driver he had been paid salary of Khalasi and was paid over time for working as Jeep Driver. He also stated that he is not aware that the post of Jeep Driver is selection post; and also that any notification for selection of Jeep Driver was issued. He also stated that he did not apply for the post of Jeep Driver.

18. Having gone through the rival pleadings of the parties and evidence relied upon by them, it comes out that the workman had been appointed as Khalasi; and was paid accordingly. The admission of the workman that he had been paid over time for working as Jeep Driver, goes to prove the case of the management the services of the workman were availed as Jeep Driver as and when required in the exigencies and not on regular basis and for which he was paid over time.

Further, the management of the railways has filed copy of notification dated 07/08-03-2006 and 24/25-04-2006, annexure No. 2 of the written statement and accordingly, has succeeded to prove that the post of Jeep Driver is selection post and formal notification was issued, calling for applications from eligible candidates and list of applicants short listed for trade test and interview. On the contrary the workman failed to prove that he continuously worked on the post of Jeep Driver and he had right for regularization against said post.

19. Accordingly, in view of the facts and circumstances of the case and discussions made hereinabove, I am of considered opinion that the workman had been appointed as Khalasi and is paid accordingly. However, he had been put to work as Jeep Driver in the exigencies only for which he was paid over time. The post of Jeep Driver is selection post and the workman failed to show that he ever applied for the said post or he has right to get regularized against said post. Hence, the reference is adjudicated against the workman's union; and as such, I come to the conclusion that the workman Mo. Mustafa is not entitled to any relief.

20. Award as above.

LUCKNOW.

23rd December, 2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 881.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 50/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/187/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 881.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41012/187/2002-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 50/2003**

Ref. No. L-41012/187/2002-IR(B-I) dated 31.03.2003

BETWEEN :

Smt. Rekha Talreja W/o Late Sri Nanak Chander.
C/o Sh. B.P. Pandey, 106/371, Heeraganj.
Kanpur (U.P.)208001

AND

1. The Divisional Railway Manager,
Northern Railway
Allahabad(U.P.)211006
2. The Divisional Medical Officer
Northern Railway, Loco (Old Station)
Kanpur Nagar

AWARD

1. By order No. L-41012/187/2002-IR(B-I) dated 31.03.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Smt. Rekha Talreja W/o Late Sri Nanak Chander, Kanpur and the Divisional Railway Manager, Northern Railway, Allahabad(UP) & the Divisional Medical Officer, Northern Railway Loco (Old Station) Kanpur Nagar for adjudication.

2. The reference under adjudication is:

“KYA MANDAL RAIL PRABADHAK, UTTAR RAILWAY, ALLAHABAD DWARA SMT. REKHA TALREJA W/O LATE SRI NANAK CHANDER KO DANDAESH DATED 11.05.2001 KE DWARA ANIVARYA SEVA NIVRAT (COMPULSORY RETIREMENT) KIYA JANA NYAYOCHIT HAI? YADI NAHIN TO KARMKAR KIS ANUTOSH KA HAQDAR HAI?”

3. As per the claim statement A1-6, the petitioner has stated in brief that on the consequence of death of her husband Sri Nanak Chander who had been working as Class IV employee under the subordination of opposite party, she was given appointment under Dying and Harness Rules, and was posted at Loco Hospital, Kanpur, she had always worked with sincerity, honesty and diligence, and no warning or charge sheet was ever issued to her. She has further stated that due to continuous hard labour, she was under mental pressure and anxiety. Being busy in proper up bringing of her children she got seriously ill and submitted an application for Voluntary Retirement on 02.11.1998, but the management declined and did not accept her request. Again she moved an application for review of that order, representations dated 18.02.2000, 21.02.2000, 24.10.2000 and 23.11.2000 were moved by her but she was charged that she had abstained herself from duty without any prior permission, documents were fabricated by the officers of the management, no opportunity to defend herself was provided, domestic enquiry was conducted against the principle of natural justice and she was held guilty and she was retired compulsorily. With the aforesaid pleadings the applicant has requested to declare the order passed by the management regarding compulsory retirement as unfair and illegal and to provide her all the benefits due during service, post retiral dues have also been sought by the petitioner.

4. Several annexures have been enclosed alongwith claim statement.
5. Again as per list C-22 various documents have been furnished.

6. The opposite party strongly denying the allegations levelled in the claim statement, has filed written statement A2-10, wherein it has been admitted that after the death of Sri Nanak Chander, petitioner was given employment as Aya in the Loco Hospital, Kanpur. The opposite party has stated that her work was ordinary in nature and as per service rules she was debarred from Voluntarily Retirement since she has completed 16 years 6 months instead of qualifying service of 20 years. After rejection of the application, she was advised to join duty but she did not join, enquiry was conducted as per rules and opportunity was provided to her but she intentionally avoided to attend the enquiry proceedings, moreover doctor was sent to examine her and report was received which showed that the applicant was not severely ill as claimed. The opposite party has requested to reject the claim statement; Certain documents have been filed by the management.
 7. Later on rejoinder was filed by the workman wherein the pleas taken in written statement were denied and facts ascertained in the claim statement have been reiterated.
 8. The then Hon'ble Presiding Officer/Judge framed additional issues on 26.07.2007, again my learned predecessor framed issues on 23.06.2011 afresh.
 9. The management adduced the evidence of its enquiry officer Dr.Sanjay Srivastava to prove the enquiry report and he was cross examined by the learned AR of the workman but in rebuttal workman did not turn up to support the pleadings. The preliminary issues have been decided by me in favour of the management, vide order dated 11.03.2015; thereafter several dates were given, notice through registered post was also sent to the workman. Lateron learned AR for both the parties appeared before me.
 10. Argument of both the parties have been heard. Record has been scanned thoroughly.
 11. This case has been pending before the Tribunal for the last about 13 years. The petitioner has not appeared to adduce her evidence either before the Tribunal for disposal of the preliminary issues or even thereafter. As is evident from the comprehensive order dated 11.03.2015 passed by this Tribunal, the workman was afforded full opportunity to defend herself during the domestic enquiry, she willfully abstained herself as the petitioner has not rebutted the evidence adduced by the management, before this Tribunal. She was compulsorily retired from the services w.e.f. 11.05.2001 by the management since no satisfactory explanation was ever provided by her for her continuous willful absence from the duty.
 12. Learned AR for the workman has relied on the following case laws:
 - a. 2011 (128) FLR General Secretary, General Kamgar Union and Noble Paint and Varnish Co. Pvt. Ltd page 42 Hon'ble Bombay High Court.
 - b. Civil Appeal No. 1716 of 1969 Cooper Engineering Ltd. Vs Sri P.P. Mundhe Judgment dated 20.08.2015 of Hon'ble Bombay High Court.
 13. Learned AR for the opposite party submitted that the aforesaid Rulings do not apply to the facts of the present case.
 14. Since it is quite evident from the perusal of the record that after comprehensive domestic enquiry conducted as per rules and keeping in view the principle of natural justice, punishment of compulsory retirement was inflicted on the workman. This punishment seems to be quite just and proper. No interference is further required. Therefore petitioner is not entitled to any relief.
 15. Award accordingly.
- 29.07.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 59/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/26/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 882.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41012/26/2014-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT : RAKESH KUMAR, Presiding Officer****I.D. No. 59/2014**

Ref. No. L-41012/26/2014-IR(B-I) dated 16.09.2014

BETWEEN :

Sri S.K. Sharma S/o Sri Bhanu Pratap Sharma
Village : Tayoja, Post : Khaga,
District : Fatehpur

AND

1. The Divisional Railway Manager,
Northern Railway
DRM Office, Hazratganj,
Lucknow
2. M/s Shahid Faizan Ahmed & Brothers
654, Begum Ka Makbara
Janpad, Faizabad

AWARD

1 By order No. L-41012/26/2014-IR(B-I) dated 16.09.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri SK Sharma, S/o Sri Bhanu Pratap Sharma, Fatehpur, and the DRM(NR)Lucknow/Shahid Faizan Ahmed & Brothers, Faizabad for adjudication.

2. The reference under adjudication is:

“KYA M/S SHAHID FAIZAN & BROTHERS, FAIZABAD VA PRABANDHAN, UTTAR RAILWAY, LUCKNOW DWARA SRI S.K.SHARMA S/O SRI BHANU PRATAP SHARMA KO DINANK 25.04.2009 KO NAUKARI SE NIKALA JAANA NYOCHIT EV VAIDH HAI? YADI NAHIN TO VADI KIS RAHAT KO PANE KA HAQDAR HAI?”

3. After receiving the schedule, referred by the Govt. of India vide its letter dated 16.09.2014, the case was registered in the court on 30.09.2014. Notice through registered post was issued to the workman for filing claim statement with list of reliance and witnesses, with an advance copy to the management.

4. On 24.04.2015, an authority was filed on behalf of Opposite party No.1 viz. DRM, Northern Railway, Lucknow. Although 13 dates have been given in this case, neither the workman nor his representative, appeared before the Tribunal. No claim statement has been filed till date. Learned AR for the opposite party submitted that perhaps the grievances of the workman might have been redressed.

5. Heard learned AR of the opposite party. Perused the record. Since neither any claim statement has been filed nor any AR/workman appeared before this Tribunal, it seems that the workman does not intend to further proceed with the case. His grievances might have been redressed. In such circumstances it can not be inferred that the impugned order dated 25.04.2009 passed by the opposite party, is illegal or improper. The workman is not entitled to any relief.

6. Award accordingly.

29.07.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनईआर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 113/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/15/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 883.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of NER and their workmen, received by the Central Government on 05.04.2017.

[No. L-41011/15/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 113/2011

Ref. No. L-41011/15/2011-IR(B-I) dated 29.08.2011

BETWEEN :

United Trade Union Congress
107/76, Jawahar Nagar
Kanpur (U.P.)

AND

1. The Divisional Railway Manager
NER, DRM Office, Ashok Marg,
Hazratganj
Lucknow

AWARD

1. By order No. L-41011/15/2011-IR(B-I) dated 29.08.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between United Trade Union Congress, Kanpur (espousing cause of late Sri Balram Singh) and the DRM, NER, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE DEMAND OF THE UNION FOR GRANT OF PENSION TO LATE SRI BALRAM SINGH BY COUNTING WHOLE PERIOD OF WORKING AS QUALIFYING SERVICE AND THEN GRANT OF FAMILY PENSION TO HIS WIDOW SMT. SHEELA DEVI AND MINOR CHILDREN IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE UNION IS ENTITLED ?”

3. As per the claim statement W-3, the workmen union have stated that late Sri Balram Singh S/o Sri Jagannath Singh was appointed on 16.03.1978 under Rail Path Nirikshak, Northern Railway, Deoria, and since then he has worked on several places, and an employee is provided with temporary status as per rules after completing 120 days of service. The claim statement has been filed by the widow of Sri Bal Ram Singh. As per the screening conducted in 1986, Sri Balram Singh was designated as Khalasi and was placed in the pay scale of Rs.750-940.

4. The union has further stated that the said employee was posted as Carriage Khalasi on 01.01.1986 under CDO, Gonda in the pay scale of Rs.750-940, thereafter he was transferred to Gorakhpur, he was promoted to the post of Carriage Khalasi-2 in the pay scale of Rs. 2650-4000. The applicant has stressed that suddenly on 16.04.2015 when Sri Balram Singh was on duty, he got ill and he was sent to Railway Hospital, Gorakhpur in an Ambulance, during his

treatment in the Railway Hospital, on 29.06.2006 he was declared medically unfit and was retired. After his discharge from the hospital he continued his treatment but unfortunately expired on 11.02.2008. It has been stated in the claim statement that since his appointment on 16.03.1978, he has been working continuously till his retirement and had worked for more than 28 years and he was entitled for pension but no pension was provided to him. The department informed that the employee had worked only 8 years 11 months and 26 days, which is less than 10 years, therefore he is not entitled for any pension.

5. The workmen union has stressed that the stand taken by the management is not proper since the opposite party admits that Sri Balram Singh got permanent appointment on 01.01.1986 and worked till 29.06.2006 therefore his services exceeded 20 years and he should have been entitled for benefit of pension. It has been alleged that the direction given by the Railway Board in its order dated 28.11.1986, his wife Smt. Sheela Devi is entitled for family pension. From 29.06.2006 the date of retirement and till the date of death i.e. 11.02.2008 the deceased employee was entitled for pension and thereafter his wife is entitled for family pension. With above pleadings request has been made in the claim statement for pensionary benefit to Sri Balbir Singh since 29.06.2006, the date when he was declared medically unfit and after his death payment of regular pension to his wife Smt. Sheela Devi alongwith interest.

6. The management while denying the allegations leveled in the claim statement has filed written statement M-7 wherein Railway Establishment Rules have been quoted and it has been stressed that as per service record the date of first appointment of Sri Balram Singh is 01.01.1986 and not 16.03.1978 as stated in the claim statement, he was granted temporary status w.e.f. 01.01.1986, he was found successful in the screening vide notification dated 19.04.1995 and not in 1986 and he was granted time scale as Substitute w.e.f. 01.01.1986, since he was medically decategorised w.e.f. 29.06.2006 therefore he was retired from service from that date, and later on he died on 11.02.2008.

7. The opposite party has further stated that qualifying service of Late Sri Balram Singh was only 8 years 11 months and 26 days which is much less than 10 years, hence in terms of Pension Rules pension was not admissible to the applicant, and therefore family pension is not admissible to his wife. The details of service book have been mentioned in the written statement in para 14.

8. The management has asserted that only 50% of the service from the date of granting temporary status to the date of regular posting, is counted as qualifying service for the grant of pension, therefore the qualifying service of late Sri Balram Singh was much less than 10 years, hence he was neither entitled to grant of pension nor his wife Smt. Sheela Devi was entitled for pension under Rules. The management has prayed to dismiss the claim statement alongwith cost. Several annexure have been filed alongwith written statement by the opposite party.

9. The union has filed rejoinder W-8, with strong denial of the pleas taken in the written statement, while reiterating the facts mentioned in the claim statement. The petitioner has filed documents with the list W-9.

10. On behalf of the applicant, affidavit of Smt. Sheela Devi W-10 was filed and she has been thoroughly cross examined by the management. The management has filed several documents as per list M-13.

11. The management has filed an affidavit of Sri S.V. Singh, DPO as M-16 and affidavit of Sri Pradeep Kumar, APO M-21. Sri Pradeep Kumar, APO has been cross examined on behalf of the applicant. Later on certain documents have again filed by the management as per list M-27.

12. Arguments of both the parties have been heard at length. Record available before the Court has been perused thoroughly.

13. The authorized representative of the workman has submitted that the workman had been appointed w.e.f. 16.03.1978 and he had been given temporary status after completion of 120 days of service and accordingly, he was entitled for all benefits available to the railway servants. He has submitted that the workman fell ill during duty period and was declared unfit on 29.06.2006 and accordingly was retired w.e.f. 29.06.2006; but he was denied pension for the reasons, as informed by the management, that the workman had qualifying services less than 10 years. It has been submitted by the workman that the management did not count services of the workman properly which led to shortage of qualifying services.

14. In rebuttal, the authorized representative of the management of the NER has submitted that the workman was a substitute and as per service records, his services began w.e.f. 01.01.1986 and not 16.03.1978; and that the workman was granted temporary status w.e.f. 01.01.1986. The representative of the management has submitted that the workman was regularly appointed, after screening on 19.04.1995 and since the workman was decategorized and retired on 29.06.2006, therefore, the total qualifying service of late Sri Balram Singh was only 8 years 11 months and 26 days which was less than 10 years; hence the pension was not admissible to the workman under Rule 69 (2)(b) of Pension Rules.

15. I have given my thoughtful consideration to the rival submissions of the learned authorized representatives of the parties and scanned entire evidence available on record, documentary as well as oral.

16. The workman union has come up with the case that the workman had been appointed on 16.03.1978 and after screening, held in 1986, was appointed as Khalasi on 01.01.1986. It is also stressed case that the workman had been degraded and was retired on 29.06.2006 therefore, he had ample length of service which might have served the purpose/length of qualifying service, under Rules, for grant of Pension; but the management deprived him of the same and resultantly the workman had been deprived of pension and widow of the workman has been deprived of family pension on demise of her husband on 11.02.2008.

17. Per contra, the management of the NER has come up with the case that the workman was appointed as substitute w.e.f. 01.01.1986 and was granted temporary status & time scale (196-232/750-940) w.e.f. 01.01.1986. Balram Singh was found successful in screening, notified vide dated 19.04.1995 and accordingly, was regularly appointed w.e.f. 19.04.1995. It is also the case of the management that the total qualifying service of Balram Singh was 08 years 11 months 26 years, which was less than 10 years' of qualifying service, required for grant of Pension, under Rules; resultantly, Balram Singh was not granted pension and after his demise his widow too is not entitled for family pension.

18. It is admitted case of the management of the NER that the late Sri Balram Singh was appointed as substitute on 01.01.1986 and granted temporary status/time scale Rs. (196-232/750-940) as per Para 6 & 9 of the written statement filed by the management before this Tribunal. The management has filed service record in support of its contention. It has also been pleaded by the management that the workman had been regularly appointed after screening on 19.04.1995 and got retired w.e.f. 29.06.2006; accordingly, the management has calculated the service of Balram Singh, for the purpose of pension as under, vide Para 14 of the written statement:

Date of appointment/granting of Time Scale (T.S.) as substitute	:	01.01.1986
Date of regular appointment	:	19.04.1995
Date of medically decategorization in service	:	29.06.2006
Substitute Service		
Date of granting T.S. as substitute	:	01.01.1986
Date of regular appointment after screening	:	19.04.1995
Total Service as a substitute	:	09 years 03 months 18 days
Regular Service		
Date of Regular Appointment	:	19.04.1995
Date of retirement (Medically decategorized)	:	29.06.2006
Total service	:	11 years 2 months 10 days
Qualifying Service		
(a) Total Regular Service	:	11 years, 2 months, 10 days
(b) 50% total substitute service	:	4 years, 7 months, 26 days
(c) Total service (a+b)	:	15 years, 10 months, 6 days
(d) Non-qualifying service	:	6 years, 10 month, 10 days
(e) Total qualifying service (c-d)	:	8 years, 11 months, 26 days

The above calculation of service for qualifying service for pension reveals that the management of NER counted only half of the service length, the workman rendered as substitute service i.e. 4 years, 7 months, 26 years instead of full service rendered as substitute. In this regard, reliance is placed, by the parties, upon Rule 32 of Railway Services (Pension) Rules, 1993 which reads as under:

32. *Counting of service of a Substitute. – Service rendered as substitute shall be counted for pensionary benefits from the date of completion of three months in the case of teachers and four months in other cases of continuous service as substitute followed by absorption in a regular Group C or Group D post without any break.*

A bare perusal of above Rule shows that the N. E. Railway management did not consider the Rule rightly and counted only half of the substitute service rendered by the workman. Had the Railway administration counted the whole length of substitute service of the workman, as required under above quoted Rule 32 of Pension Rules, the net qualifying service of the workman would have been more than 10 years, which was more than sufficient to bring him within the purview of pension and after his death family pension to his widow and eligible dependents.

19. Learned AR for the petitioner referred 2009 (120) FLR, Union of India vs CAT & others, Page 142, Hon'ble Patna High Court, in support of his arguments. OP's learned AR submits that the pronouncement does not apply here.

Learned AR for the OP relies upon (2008) 1 SCC (L&S), G.M., N.W. Railway vs Chanda Devi, Page 399, Hon'ble Supreme Court. Petitioner's learned AR strongly objected and submits that the Ruling relates to "casual employee" and it has got no bearing on the present case pertaining to "substitute" being granted Temporary Status later on. Petitioner's submission cannot be brushed aside in the absence of any legal and logical reasoning.

Hon'ble Apex Court in 1996 AIR 752 Prabhavati Devi vs. Union of India while deciding right and privileges of a substitute who acquired temporary status one year back before his death, observed that the workman acquires rights and privileges of temporary servant and his dependants become eligible for family pension. In the present case, as per pleadings of management itself the workman has worked for more than 20 years after grant of temporary status.

20. Therefore, keeping in view, the facts and circumstances of the case, respective pleadings of the parties and documentary as well as oral evidence relied upon by the parties, in the light of pronouncement of Hon'ble Supreme Court, I am of considered opinion that the demand of the union for grant of pension to late Shri Balram Singh by counting whole period of working (as substitute) as qualifying service and then grant of family pension to his widow, Smt. Sheela Devi and minor children is legal and justified; and accordingly, I come to the conclusion that the action of the Management of NER in not counting the whole period of working, as substitute, as qualifying service and resultantly, depriving the workman, late Sri Balram Singh of pension and after his death his widow, Smt. Sheela Devi and minor children with family pension is unjustified and illegal, therefore, the workman, late Sri Balram Singh is entitled for pension and other pensionary benefits and on his death his widow Smt. Sheela Devi and minor children are entitled for family pension.

The management of NER is directed to pay arrears of pension and other pensionary benefits to late Sri Balram Singh and pension as well as arrears of pension to his widow, Smt. Sheela Devi and minor children within ten weeks of publication of this award, failing which the widow of workman shall be entitled for interest @ 6% per annum on entire amount.

21. The reference is answered accordingly.

22. Award as above.

LUCKNOW

31st October, 2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 884.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 46/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/30/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 884.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2015) of the Central Government Industrial Tribunal-cum-

Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 05.04.2017.

[No. L-41011/30/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 46/2015

Ref. No. L-41011/30/2015-IR(B-I) dated 15.05.2015

BETWEEN :

Aanchal Karyakarini Adyaksh
Rail Sevak Sangh, NER
C/o Sri DP Awasthi
49, Tilak Nagar
Lucknow-226004 (U.P.)

AND

1. The Divisional Railway Manager(Per)
North Eastern Railway, DRM Office
Ashok Marg
Lucknow
2. Asstt.Divl. Engineer
NER, Lucknow Junction
Lucknow

AWARD

1. By order No. L-41011/30/2015-IR(B-I) dated 15.05.2015 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Smt Ram Kumari Widow of Late Sri Ram Lakhan and the Divisional Railway Manager, NER, Lucknow for adjudication.

2. The reference under adjudication is:

“KYA PURVOTTAR RAILWAY PRASHASAN, LUCKNOW DWARA SRI SITARAM SHARMA S/O SRI KUBER SHARMA, KO MEDICAL SUVIDHA KA BHUGTAN NA DIYA JANA NAYAOCHIT EVAM VAIDH HAI? YADI NAHIN TO VADINI KIS RAHAT KO PANE KA HAQDAR HAI?”

3. After receiving schedule letter from the Ministry, notices through registered posts were sent to both the parties. Learned AR for the workman appeared before the court and sought time for filing claim statement. On behalf of the opposite party Sri Rahul Nigam filed authority M-3. On the request of the workman several dates were given, but later on workman or his representative did not attend the court on any of the dates.

4. Learned AR for the opposite party management pointed out that perhaps the grievances of the petitioner might have got redressed. He requested to adjudicate the matter in favour of the management.

5. Since no claim statement was filed on behalf of the petitioner regarding the schedule referred, neither any evidence was adduced for the same, in view of the submissions made by the Learned AR for the opposite party Sri Rahul Nigam, Advocate, it is inferred that the impugned order referred in the schedule regarding denial of medical facilities to the petitioner, can not be treated as illegal or improper. The petitioner is not entitled to any relief.

6. Award accordingly.

LUCKNOW
27.01. 2017

RAKESH KUMAR, Presiding Officer